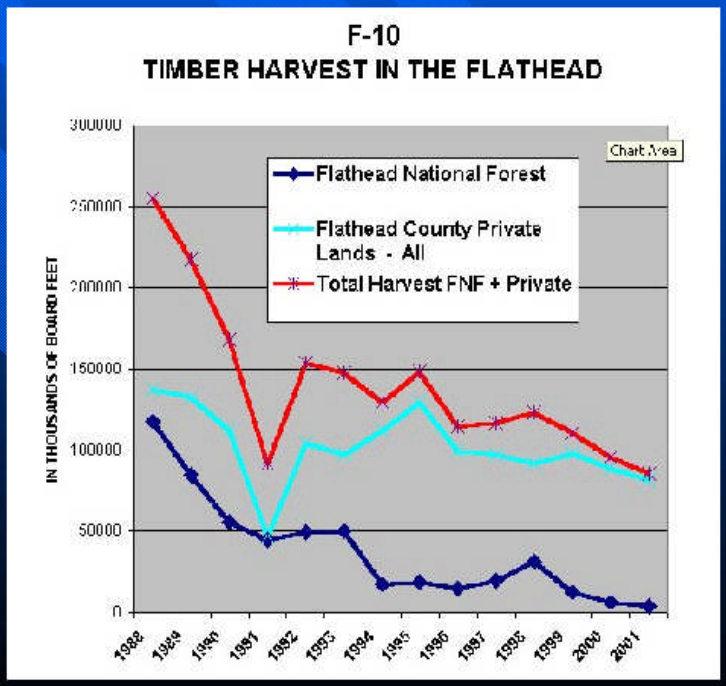
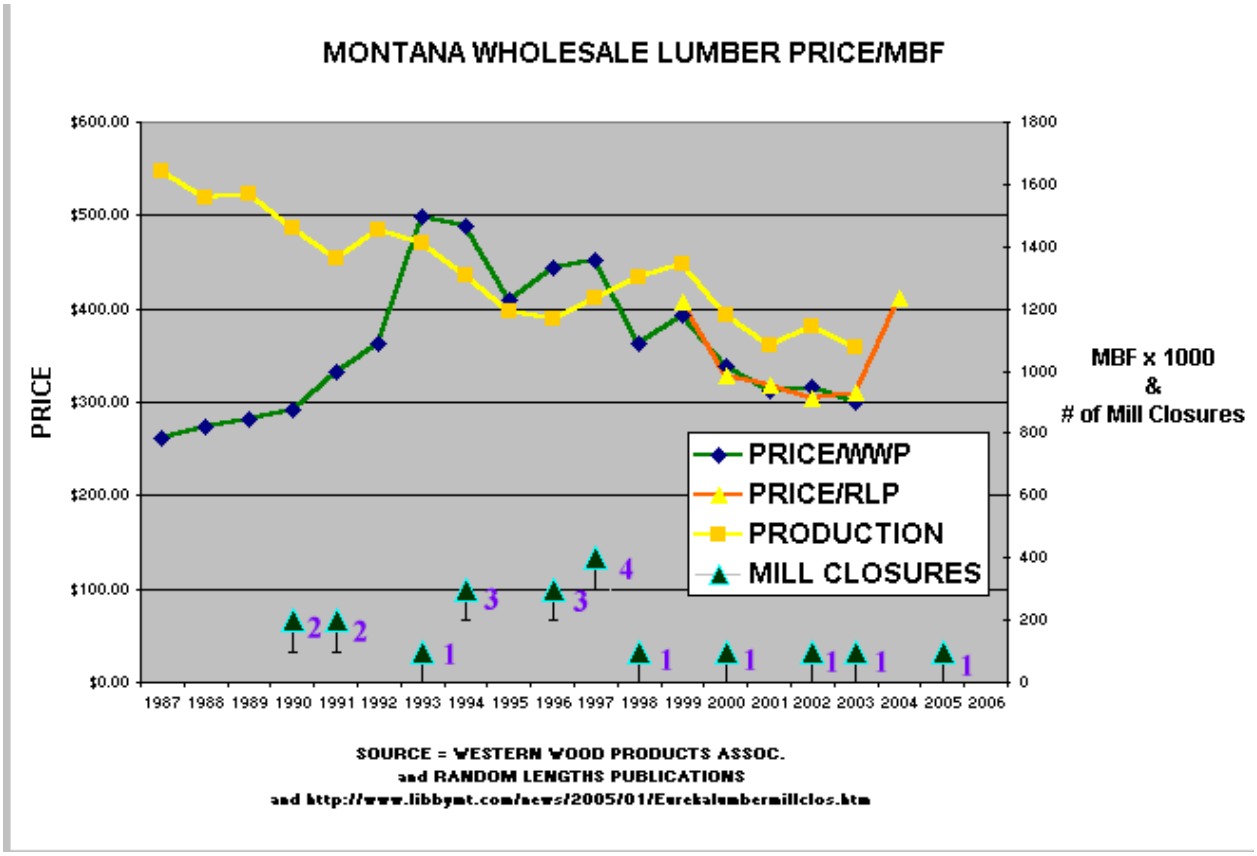
Declining Timber Harvest on Flathead National Forest

- Total Harvest- red
- All Private Harvest - lt blue
- FNF Harvest - dk blue



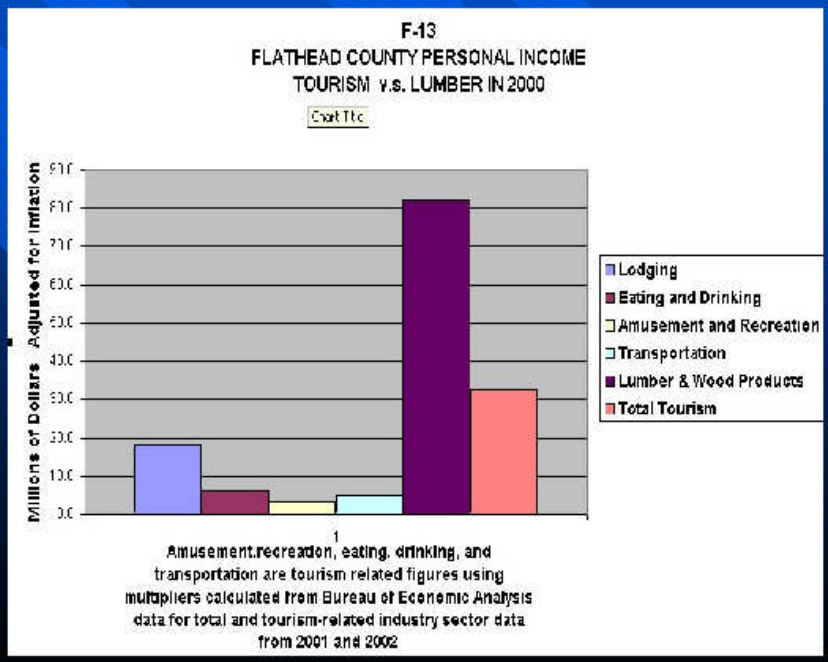
This graph shows the record of sawtimber harvest (logs that are used by the mills) in Flathead County by landownership. Due to the decline of supply from the Flathead National Forest, our existing industry is supplied primarily from private lands. This situation is not sustainable in the future if we are to maintain the wood products industry we have now.



This graph shows that wholesale lumber prices for Montana lumber spiked to record highs in 1992. Prices have remained relatively high all through the 1990's and have returned to near record highs in 2004. Despite record high prices, several major mills in Montana closed in the early 1990's because there simply was not enough logs as harvest from National Forests in Montana plummeted to record lows. Lumber prices are again approaching a record high in 2004. Mill closures in Montana are not correlated to low lumber prices.

WAGE COMPARISON
Tourism and Wood Products

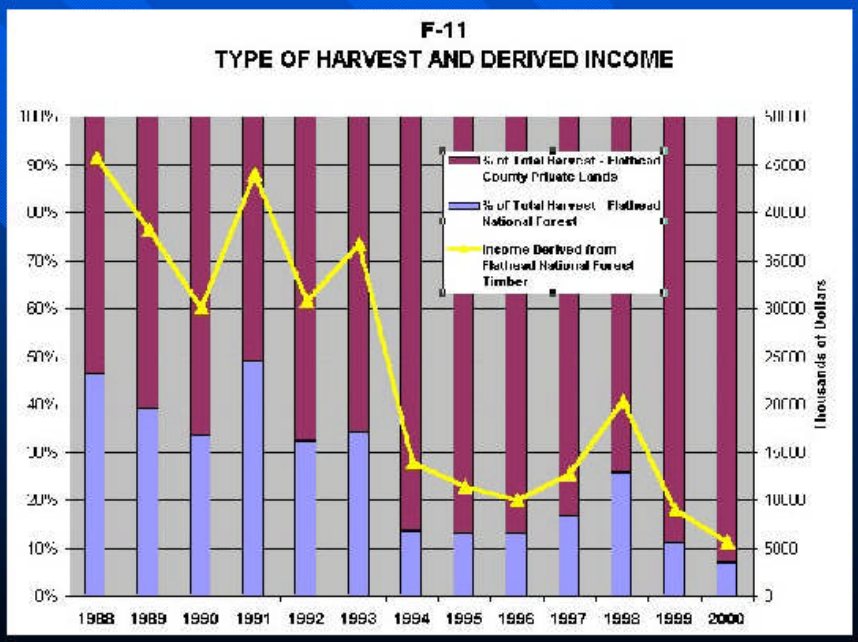
- WOOD PRODUCTS $82,000,000 purple
- TOURISM $30,000,000 peach



The importance of existing woods products to our local economy is illustrated by Personal Income from wages paid in Flathead County by wood products compared to major and total tourism economic sectors. Flathead County cannot afford to lose any more high paying wood products jobs.

Income from FNF Harvest

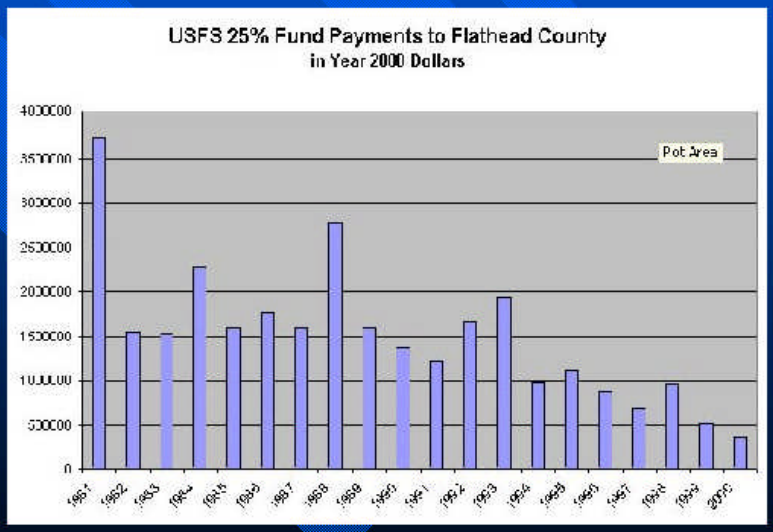
- Income Derived from FNF - yellow line
- FNF % of Total Harvest - blue bars



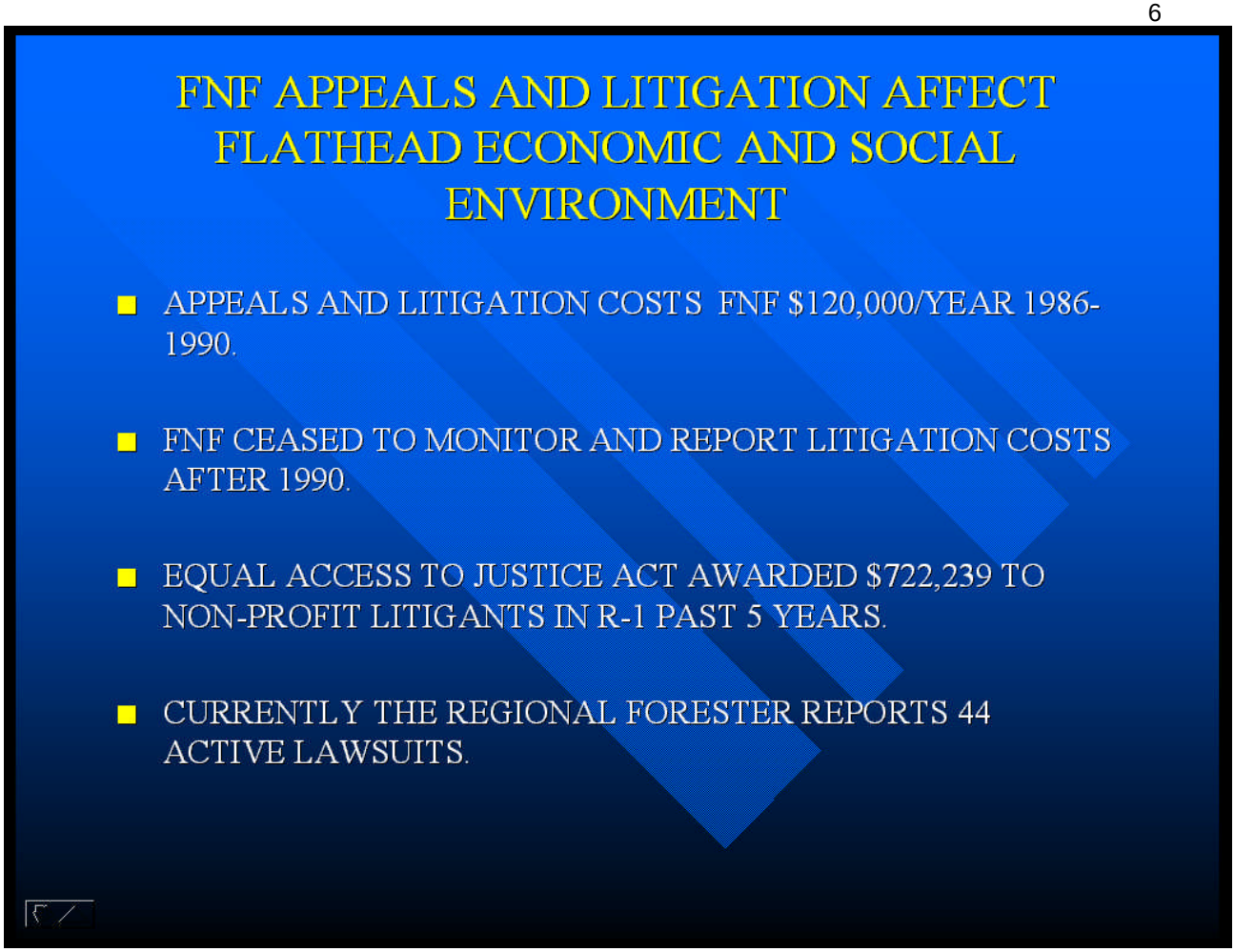
As percent of timber harvest has declined from National Forests, the income derived from Flathead National Forest timber has declined.

Declining Payments to Counties from FNF Harvest

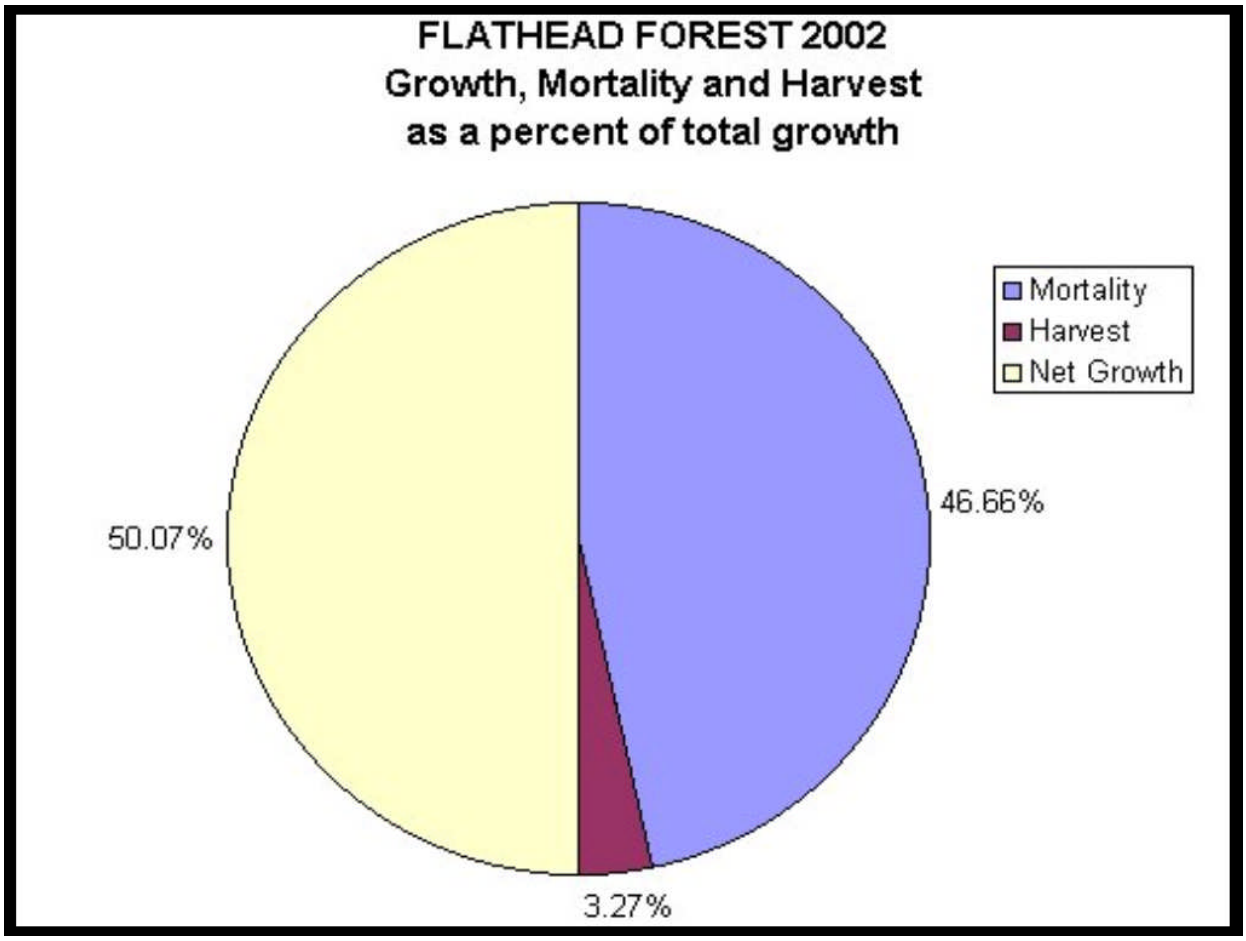
As the harvest from National Forests Declines, payments to counties from the 25% fund decline also



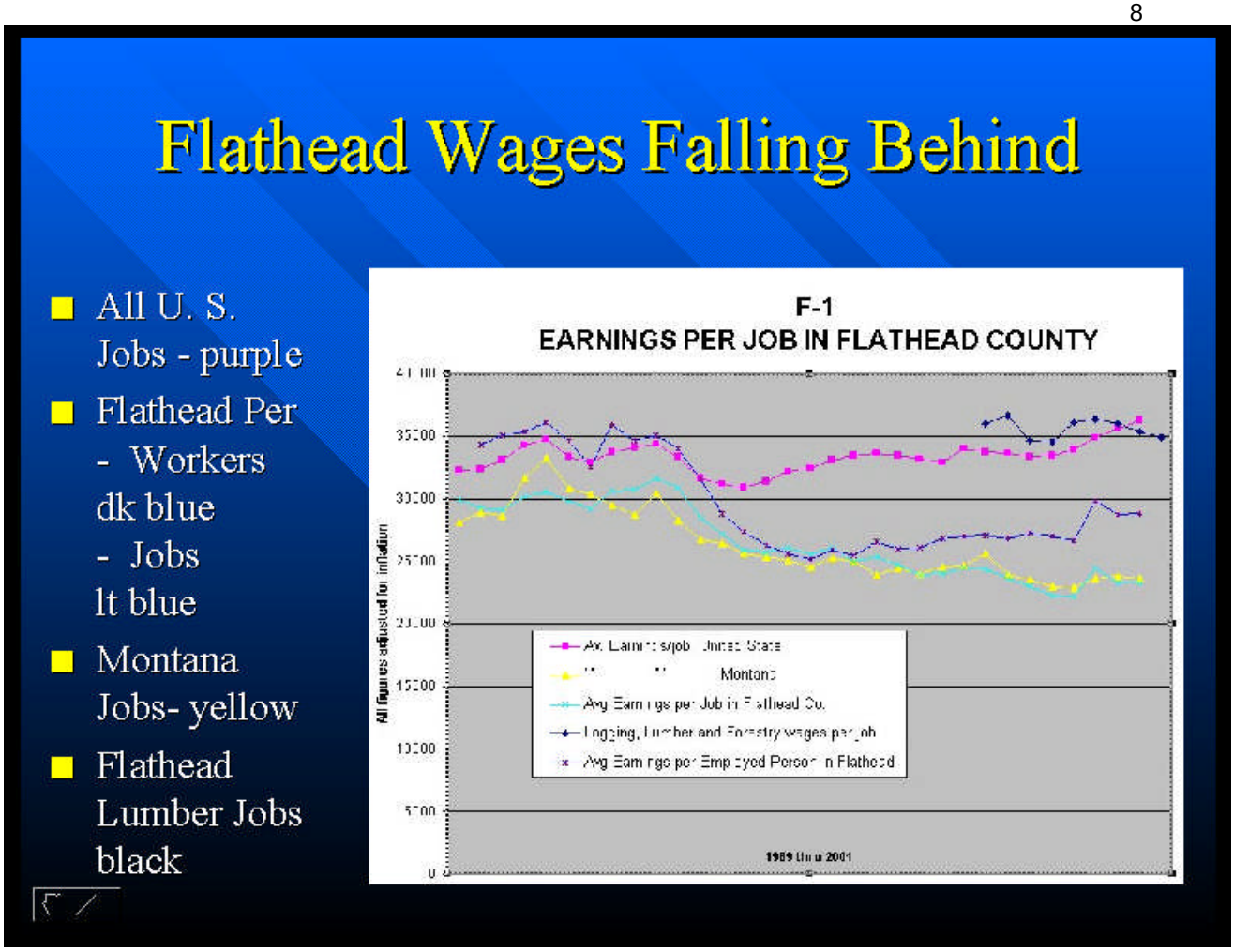
Payments to Flathead County has declined along with declining federal timber harvest. The 25% of federal revenues (approx. 1million dollars/yr. for Flathead County) that historically were paid from Federal timber receipts has had to be made up by taxpayers.



A major factor in the decline of timber sales on the Flathead and other National Forests has been constant appeals and litigation. There should reports to the public and to Congress on what appeals and litigation direct costs are, what projects and their preparation costs are, and what output values lost due to legal delays and obstruction. The Equal Access to Justice Act compensates most non-profit litigants for filing a lawsuit, and results in nearly "no-risk" for a non-profit corporation to file a lawsuit. Reform of EAJA is necessary to remove the veto power the Act provides for special interests to stop management of federal lands.



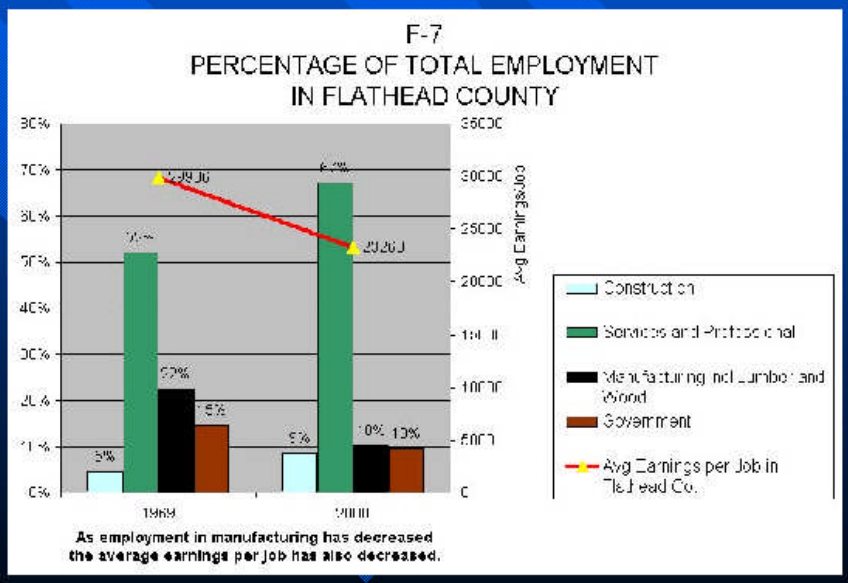
The latest forest inventory data (USDA Forest Research Station, Forest Inventory and Analysis, Ogden, Utah) shows that the lands suitable for timber harvest (about 600,000 acres) on the Flathead Forest grows an average of 113 million bd. ft. (77 log truck loads of wood per day, 365 days a year). The trees that die each year on the suitable lands are equivalent to 50% of the annual growth, and in 2002 only about 3% of the growth was harvested. The average annual biomass growth has an energy equivalent of 300 gallons of gasoline per acre/yr. The lack of harvest results in rapid accumulation of biomass adding to the already extreme fuel buildup and resulting fire hazard. This situation is not sustainable for the economy nor for healthy watersheds and all the natural resources these watersheds provide.



Flathead County average wage per job compared to national and state average since 1969. The widening divergence between Montana and Flathead County average wage compared to the national average is a major problem and affects the quality of life for Montana workers. The cost of living index for Kalispell is always within 1-3 % of the national average. Also shown is the average wage per job in logging, lumber and Forestry and the average earnings per employed person in Flathead County. It can be seen that the wood products sector pays much higher wages, near the national average. The average Earnings per Employed Person trend shows increasing earnings above the State and County average wage per job indicating that more people are working at more than one job to make those total earnings closer to the national average wage per job.

Declining Wages Per Job

- Declining Wages per Job - red line
- Service and Professional - green bars
- Lumber - black bars
- Government - brown bars
- Construction - lt blue bars



This graph provides a comparison of Flathead County major economic sectors percent of the total economy and the average wage per job in 1969 and 2000. This data shows that as the service sector has increased and the wood products sector has decreased as a percent of the total economy, the average wage per job has significantly declined.

Recommendations for the future. If Flathead County economy is to remain diverse, the community must take an interest in promoting utilization of the highly productive federal forests that occupy a large percentage of the county. Increasing production from the federal forest is necessary to keep the industry we have and there is ample opportunity to add new industry if the federal supply were predictable.

References and Data Sources

DECLINING FEDERAL TIMBER HARVEST

Flathead NF Sawtimber Harvest Data is from the Region One Timber Cut and Sold on National Forests Under Sales and Land Exchanges by Fiscal Year. The harvest figures do not include firewood and other non-lumber harvest. This chart shows harvest as a % of the total.

Flathead County Total Timber Harvest and Harvest from Private Land is from the U. of MT. Bureau of Business and Economic Research.

WHOLESALE LUMBER PRICES

Random Lengths Publications Yardstick, October 2004 Lumber Composite Price
Western Wood Products Association for lumber prices and production figures
www.libbymt.com/news/2005/01/Eurekalumbermillclos.htm

WAGE COMPARISON OF TOURISM AND WOOD PRODUCTS SECTORS

This chart shows gross personal income from wages and salaries for these economic sectors in 2000.

The U.S. Dept of Commerce's Bureau of Economic Analysis (BEA) did a study of the tourism industry. http://www.bea.doc.gov/bea/dn2/iedguide.htm - TTSA This study estimated the amount of personal income in each tourism related business sector that was derived from tourist spending. Using this analysis, a percentage was calculated for the sectors and multiplied the Flathead County gross incomes for each sector by the corresponding percentage.

The gross incomes for all the sectors including lumber were taken from BEA – REIS tables for Flathead Co. MT To find this data go to http://www.bea.doc.gov/bea/regional/sqpi/default.cfm and choose SIC, Montana, Flathead, 2000

INCOME FROM FNF HARVEST

The gross income for lumber comes from BEA. The incomes derived from FNF harvest are calculated by multiplying the % of FNF harvest by the total lumber income.

DECLINING PAYMENTS TO COUNTIES FROM FNF HARVEST

Flathead NF Payments to Flathead County: Northern Region Report, Payments to States from National Forest Receipts by Fiscal Year.

APPEALS AND LITIGATION

Flathead National Forest Monitoring Report FY 91, Statements by Regional Forester Abigail KimbelL at WETA meeting, Kalispell,
FNF GROWTH AND MORTALITY AND HARVEST

Flathead National Forest Growth and Mortality from USDA Forest Service, Rocky Mountain Forest Research Station, Forest Inventory and Analysis Group, Ogden, UT. (www.fs.fed.us/rm/ogden/state/reports/montana/nfs/tables/sum-flathead.html)

FLATHEAD WAGES FALLING BEHIND

Data for US, MT and Flathead earnings per job for all sectors came from BEA and the Bureau of the Census via the Sonoran Institute. Kalispell cost of living from Kalispell Chamber of Commerce.

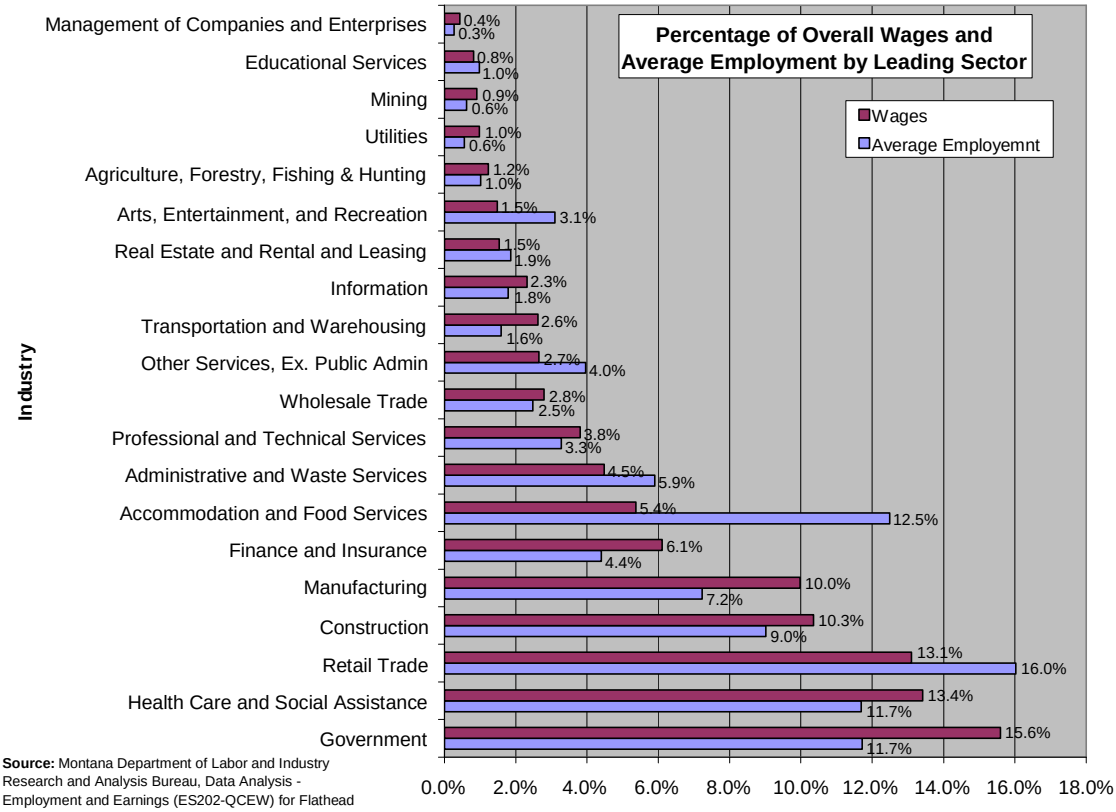
Earnings per employed person in Flathead Co. was calculated by dividing the total earnings (BEA) by the number of employed persons (Source: Montana Department of Labor & Industry, Research & Analysis Bureau, Local Area Unemployment Statistics http://rad.dli.state.mt.us/county/flathead/default.asp?data=lf)

DECLINING WAGES PER JOB

Earnings per Lumber Industry were calculated from total wages (BEA) divided by lumber employment. The lumber employment data came from the Bureau of Census, County Business Patterns – Flathead County, MT

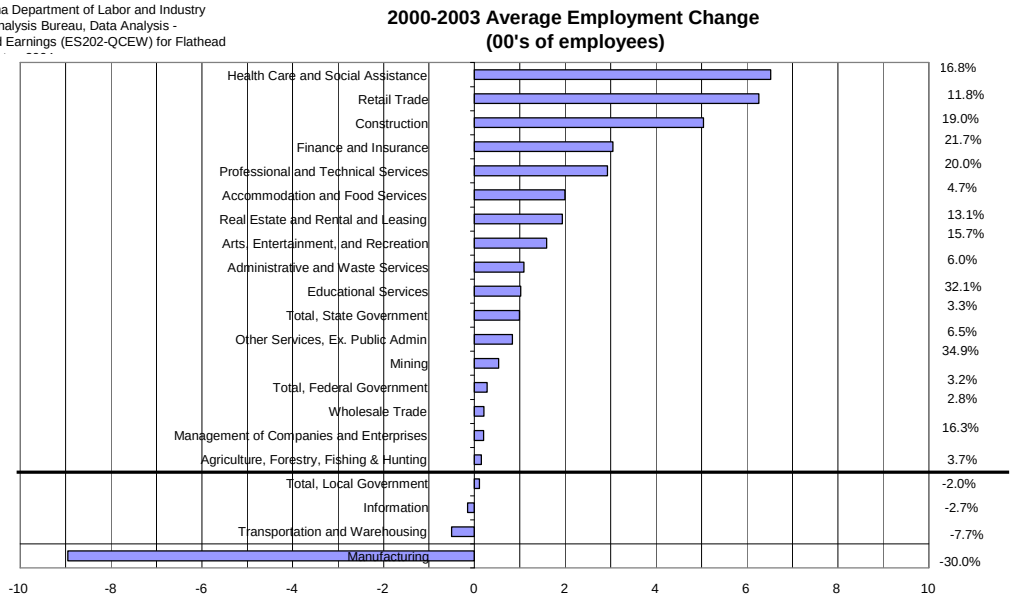
ALL ECONOMIC

APPENDIX A: WAGES AND EMPLOYMENT



Source: Montana Department of Labor and Industry Research and Analysis Bureau, Data Analysis - Employment and Earnings (ES202-QCEW) for Flathead

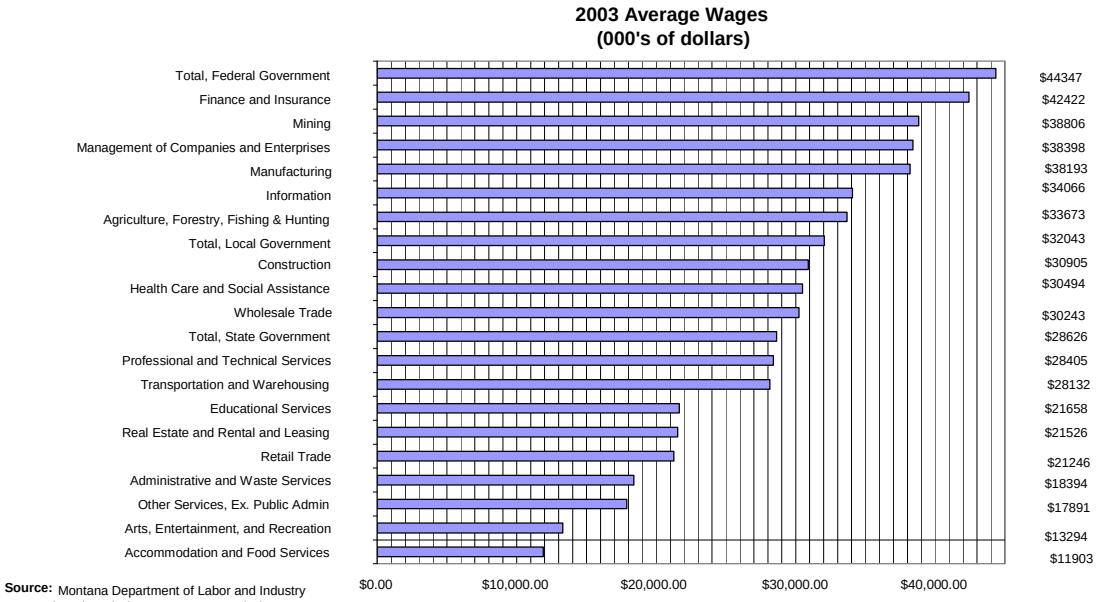
Source: Montana Department of Labor and Industry Research and Analysis Bureau, Data Analysis - Employment and Earnings (ES202-QCEW) for Flathead



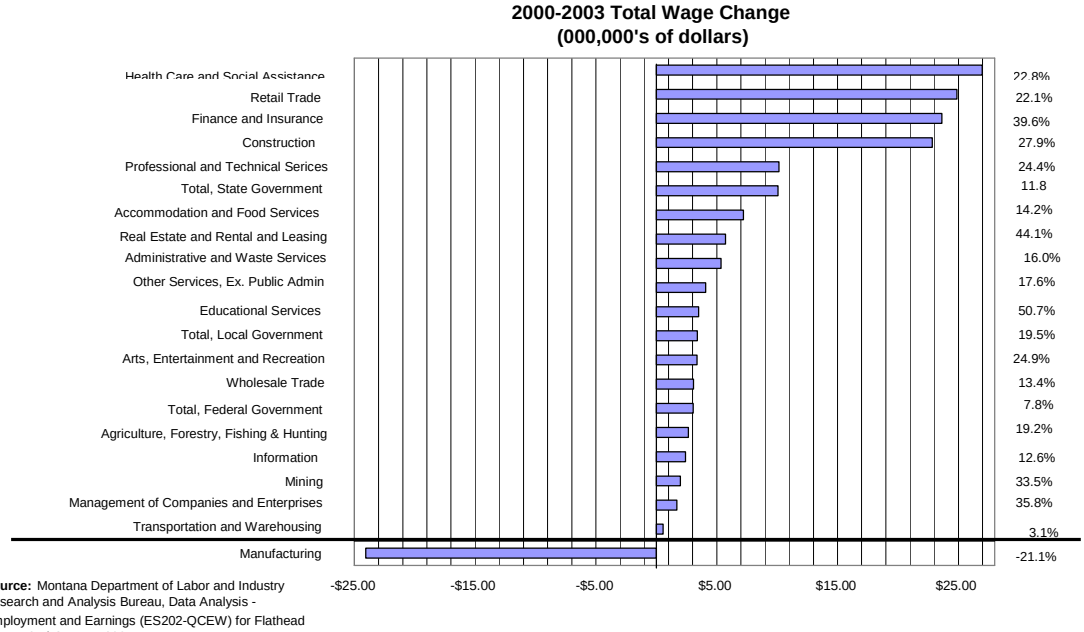
Industry	Wage Chnge	Wage % Change	Empl. Chnge	Empl. % Chnge	Empl.Change
Manufacturing	$0.00	21.11%	-8.95	29.98%	-895
Transportation and Warehousing	$0.00	3.12%	-0.5	-7.70%	-50
Information	$0.00	12.62%	-0.15	-2.69%	-15
Total, Local Government	$0.00	19.45%	0	2.01%	11
Agriculture, Forestry, Fishing & Hunting	$0.00	19.19%	0.15	3.68%	15
Management of Companies & Enterprises	$0.00	35.82%	0.2	16.26%	20
Wholesale Trade	$0.00	13.37%	0.21	2.76%	21
Total, Federal Government	$0.00	7.75%	0.28	3.16%	28
Mining	$0.00	33.53%	0.53	34.87%	53
Other Services, Ex. Public Admin	$0.00	17.59%	0.84	6.50%	84
Total, State Government	$0.00	11.81%	0.99	3.32%	99
Educational Services	$0.00	50.71%	1.02	32.08%	102
Administrative and Waste Services	$0.00	15.98%	1.09	5.99%	109
Arts, Entertainment, and Recreation	$0.00	24.88%	1.59	15.65%	159
Real Estate and Rental and Leasing	$0.00	44.12%	1.94	32.12%	194
Accommodation and Food Services	$0.00	14.18%	1.99	4.67%	199
Professional and Technical Services	$0.00	24.41%	2.93	20.00%	293
Finance and Insurance	$0.00	39.63%	3.05	21.71%	305
Construction	$0.00	27.90%	5.04	19.03%	504
Retail Trade	$0.00	22.08%	6.26	11.80%	626
Health Care, Social Assist.	$0.00	22.78%	6.52	16.80%	652

Industry	Wage Change	Wage % Chnge	Empl. Chang	Empl. % Chng	Wage Change
Manufacturing	($24.07)	21.11%	-895	29.98%	$24,067,435.00
Transportation and Warehousing	$0.57	3.12%	-50	-7.70%	$569,064.00
Management of Companies/Enterprises	$1.69	35.82%	20	16.26%	$1,691,984.00
Mining	$1.98	33.53%	53	34.87%	$1,977,538.00
Info.	$2.40	12.62%	-15	-2.69%	$2,398,473.00
AG, Forestry, Fishing & Hunting	$2.64	19.19%	15	3.68%	$2,636,037.00
Total, Fed.Gov.	$3.04	7.75%	28	3.16%	$3,041,380.00
Wholesale Trade	$3.08	13.37%	21	2.76%	$3,080,294.00
Arts, Ent.,Rec.	$3.36	24.88%	159	15.65%	$3,359,947.00
Total, Local Gov.	$3.40	19.45%	11	2.01%	$3,402,137.00
Edu Services	$3.49	50.71%	102	32.08%	$3,492,481.00
Services, Ex. Public Admin	$4.07	17.59%	84	6.50%	$4,068,080.00
Admin,Waste Serv.	$5.35	15.98%	109	5.99%	$5,351,836.00
Real Est., Rental, Leasing	$5.74	44.12%	194	32.12%	$5,736,324.00
Accomodations & Food Services	$7.19	14.18%	199	4.67%	$7,191,933.00
Total, State Gov.	$10.07	11.81%	99	3.32%	$10,070,453.00
Pro.& Tech. Services	$10.16	24.41%	293	20.00%	$10,158,775.00
Construction	$22.83	27.90%	504	19.03%	$22,834,796.00
Finance & Insurance	$23.62	39.63%	305	21.71%	$23,622,810.00
Retail Trade	$24.88	22.08%	626	11.80%	$24,880,414.00
Hlth Care & Soc.Assist.	$26.96	22.78%	652	16.80%	$26,964,233.00

Industry	Average Wage	Average Wage
Acc. and Food Services	$11.90	$11,903.59
Arts, Entertainment, and Recreation	$13.29	$13,294.40
Other Services, Ex.Public Admin	$17.89	$17,891.17
Administrative .and Waste Services	$18.39	$18,394.96
Retail Trade	$21.25	$21,246.63
Real Est. & Rental/ Leasing	$21.53	$21,658.27
Educational Services	$21.66	$21,658.27
Transportation and Warehousing	$28.13	$28,132.58
Professional and Technical Services	$28.41	$28,405.88
Total, State Government	$28.63	$28,626.18
Wholesale Trade	$30.24	$30,243.25
Health Care and Social Assistance	$30.49	$30,494.54
Construction	$30.91	$30,905.95
Total, Local Government	$32.04	$32,043.88
AG, Forestry, Fishing, and Hunting	$33.67	$33,673.87
Information	$34.07	$34,066.47
Manufacturing	$38.19	$38,193.43
Management of Companies and Enterprises	$38.40	$38,398.81
Mining	$38.81	$38,806.38
Finance and Insurance	$42.42	$42,422.46
Total, Federal Government	$44.35	$44,347.83



Source: Montana Department of Labor and Industry Research and Analysis Bureau, Data Analysis - Employment and Earnings (ES202-QCEW) for Flathead



Source: Montana Department of Labor and Industry Research and Analysis Bureau, Data Analysis - Employment and Earnings (ES202-QCEW) for Flathead

Percentage of Overall Wages by Leading Sectors

Industry	Average Employment	Wages
Government	11.7%	15.6%
Health Care and Social Assistance	11.7%	13.4%
Retail Trade	16.0%	13.1%
Construction	9.0%	10.3%
Manufacturing	7.2%	10.0%
Finance and Insurance	4.4%	6.1%
Accommodation and Food Services	12.5%	5.4%
Administrative and Waste Services	5.9%	4.5%
Professional and Technical Services	3.3%	3.8%
Wholesale Trade	2.5%	2.8%
Other Services, Ex. Public Admin	4.0%	2.7%
Transportation and Warehousing	1.6%	2.6%
Information	1.8%	2.3%
Real Estate and Rental and Leasing	1.9%	1.5%
Arts, Entertainment, and Recreation	3.1%	1.5%
Agriculture, Forestry, Fishing & Hunting	1.0%	1.2%
Utilities	0.6%	1.0%
Mining	0.6%	0.9%
Educational Services	1.0%	0.8%
Management of Companies and Enterprises	0.3%	0.4%

APPENDIX B: Bureau of Economic Assessment, Regional Facts

Flathead County, Montana
Per Capita Personal Income, 1992 - 2002 (Data from http.//www.bea.doc.gov/)

Flathead is one of 56 counties in Montana. It is part of the Kalispell, MT Micropolitan SA. Its 2002 population of 77,441 ranked 4th in the state.

PER CAPITA PERSONAL INCOME

In 2002 Flathead had a per capita personal income (PCPI) of $25,583. This PCPI ranked 12th in the state and was 103 percent of the state average, $24,831, and 83 percent of the national average, $30,906. The 2002 PCPI reflected an increase of 2.5 percent from 2001. The 2001-2002 state change was 3.3 percent and the national change was 1.2 percent. In 1992 the PCPI of Flathead was $17,403 and ranked 13th in the state. The 1992-2002 average annual growth rate of PCPI was 3.9 percent. The average annual growth rate for the state was 3.9 percent and for the nation was 4.0 percent.

TOTAL PERSONAL INCOME

In 2002 Flathead had a total personal income (TPI) of $1,981,204. This TPI ranked 4th in the state and accounted for 8.8 percent of the state total. In 1992 the TPI of Flathead was $1,095,479 and ranked 4th in the state. The 2002 TPI reflected an increase of 4.3 percent from 2001. The 2001-2002 state change was 3.8 percent and the national change was 2.3 percent. The 1992-2002 average annual growth rate of TPI was 6.1 percent. The average annual growth rate for the state was 5.0 percent and for the nation was 5.2 percent.

COMPONENTS OF TOTAL PERSONAL INCOME

Total personal income includes net earnings by place of residence; dividends, interest, and rent; and personal current transfer receipts received by the residents of Flathead. In 2002 net earnings accounted for 59.8 percent of TPI (compared with 60.0 in 1992); dividends, interest, and rent were 24.2 percent (compared with 23.8 in 1992); and personal current transfer receipts were 15.9 percent (compared with 16.2 in 1992). From 2001 to 2002 net earnings increased 4.9 percent; dividends, interest, and rent increased 1.5 percent; and personal current transfer receipts increased 6.6 percent. From 1992 to 2002 net earnings increased on average 6.1 percent each year; dividends, interest, and rent increased on average 6.3 percent; and personal current transfer receipts increased on average 5.9 percent.

EARNINGS BY PLACE OF WORK

Earnings of persons employed in Flathead increased from $1,289,199 in 2001 to $1,358,330 in 2002, an increase of 5.4 percent. The 2001-2002 state change was 4.6 percent and the national change was 1.5 percent. The average annual growth rate from the 1992 estimate of $768,585 to the 2002 estimate was 5.9 percent. The average annual growth rate for the state was 4.9 percent and for the nation was 5.3 percent.
Note: All income estimates with the exception of PCPI are in thousands of dollars, not adjusted for inflation.

PER CAPITA PERSONAL INCOME BY YEARS (Dollars)

Year:	1997	1998	1999	2000	2001	2002
Amt:	$20,320	$22,678	$22,164	$24,004	$24,957	$25,583

APPENDIX C: MULTIPLE USE AND COORDINATION WITH FEDERAL AND STATE AGENCIES

Selected Citations of Federal Code and Case Law Affecting County Planning.

This Plan provides a positive guide for the Resource Committee and the Board to coordinate efforts with federal and state land management agencies. This will insure that the development and implementation of land use plans and management actions are compatible with the best interests of Flathead County and its citizens. The Plan is designed to facilitate continued, revitalized, and varied usage of federal and state managed lands in the County.

The Resource Committee, the Board, and the citizens of Flathead County recognize that federal law mandates coordinated planning of federally managed land with local governments. They positively support varied use of these lands. This varied usage necessarily includes continuation of the historic and traditional economic uses which have been made of federal- and state-managed lands with the county. It is, therefore, the policy of Flathead County that federal and state agencies will inform the Board of all pending or proposed actions affecting local communities and citizens, and coordinate with the Board in planning and implementation of those actions. Federal laws governing land management mandate this planning coordination. They include, but are not limited to, the following particulars:

U. S. FOREST SERVICE

The Federal Land Policy and Management Act, 43 U.S. Section 1701, states the National Policy to be: “the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use projected through a land use planning process coordinated with other federal and state planning efforts." See 43 USC Section 1701 (a)(2).

Section 1712 (c) sets forth the “criteria for development and revision of land use plans." Section 1712(c)(9) refers to the coordinate status of a county that is engaging in land use planning. It requires the Secretary (of Agriculture) to “coordinate the land use inventory, planning, and management activities with the land use planning and management programs of other federal departments and agencies and of the state and local governments within which the lands are located." Section 1712 also provides that the “Secretary shall assist in resolving, to the extent practical, inconsistencies between federal and non-federal government plans." These provisions give preference to those counties who are engaging in land-use planning. Counties with a planning program. thus. have preference over the general public, special interest groups, and even counties not participating in land-use planning.

Because of the requirement that the Secretary (of the Agriculture) “coordinate land use, inventory, planning, and management activities with local governments, it is reasonable to read the requirement of assisting in resolving inconsistencies to mean that the resolution process takes place during planning instead of at completion of planning when the draft federal plan is released for public review.

The section further requires that the “Secretary(of the Agriculture) is to “provide for meaningful public involvement of state and local governmental officials... in the development of land use programs, land use regulations, and land use decisions for public lands."

When read in the light of the “coordinate" requirement of this section, it is reasonable to conclude “meaningful involvement” to refer to on-going consultations and involvement throughout the planning phase, not merely at the end. This latter provision of the statute also distinguishes local government officials from members of the general public or special interest groups.

Section 1712 (c)(9) further provides that the Secretary of Agriculture must assure that the Forest Service land use plan be “consistent with State and local plans” to the extent possible under federal law and the purposes of the Federal Land Policy and Management Act (FLPMA). It is reasonable to read this statutory provision in association with the requirement of coordinated involvement in the planning process.

The provisions of Section 1712(c)(9) set forth the nature of the coordination required by the agriculture or bureau with planning efforts by Indian Tribes, other federal agencies, and state and local government officials. Subsection (f) of Section 1712 sets forth an additional requirement that the Secretary of Agriculture “shall allow an opportunity for public involvement” which again includes Federal, State and local governments. The “public involvement” provisions of Subsection (f) do not limit the coordination language of Section 1712 (c) 9 or allow the Forest Service to simply lump local government officials with special interest groups of citizens or members of the public in general. The coordination requirements of Section 1712 (c) 9 set apart for special involvement those government officials who are engaged in land use planning, as is the case in Flathead County. This statutory language that gives preference to the county makes sense because it is already engaged in land use planning. The Board has an obligation to plan for future land use to serve the welfare of all of the people of the county, and to promote continued operation of the government in the best interest of the people of Flathead County.

Historically, the Congress, the U.S. Forest Service, and the Federal Courts have recognized that community economic stability is an important consideration in the management of federally managed lands.

Similarly, the U.S. Forest Service Regulations themselves mandate the agency to coordinate its land use plans with local government that have adopted comprehensive land use plans of their own. Some of these are shown below:

43 C.F.R. Section 1601.3-1(a)

> In addition to public involvement, the Forest Service is obligated to coordinate its planning processes with land use plans of local governments.

43 C.F.R. Section 1610-1(c)(1)

> “in providing guidance to Forest Service personnel, the Secretary of Agriculture shall assure such guidance is as “consistent as possible with existing officially adopted and approved resource related plans, policies or programs of other State agencies, Indian tribes and local governments that may be affected...”

43 C.F.R. 1610.3-1(e)

> The U.S. Forest Service is obligated to take all practical measures to resolve conflicts between federal and land use plans of local government..

USDA FOREST SERVICE

Other pertinent parts of United States Forest Service regulations are, as follows:

16 U.S.C. 1604(a)

the Secretary of agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies.

36 C.F.R. Section 221.3(a)(1)

The Forest Service is obligated to consider and provide for "community stability" in its decision making processes. See also S. Rept. No. 105.22; 30 Cong. Rec. 984 (1897); The use book at 17.

36 C.F.R.219.7 (a)

The Forest Service is obligated to coordinate with equivalent and related planning efforts of local governments.

36 C.F.R. Section 219.7(d)

The Forest Service is obligated to meet with local governments, to establish a process of coordination. At a minimum, coordination and participation with local governments shall occur prior to Forest Service selection of the preferred management alternative.

36 C.F.R. Section 219.7(d)

The Forest Service in its decision-making processes is obligated to coordinate with local governments prior to selection of the preferred alternative.

36 C.F.R. Section 219.7(c)

The Forest Service is obligated, after review of the county plan, to display the results of its review in an environmental impact statement. See also 40 C.F.R. Sections 1502.16(c) and 1506.2

36 C.F.R. Section 219.7(c)(4)

The Forest Service is obligated to consider alternatives to its proposed alternative if there are any conflicts with the county land use plans.

36 C.F.R. 219.7(f)

The Forest Service is required to implement monitoring programs to determine how the agency's land-use plans affect communities adjacent to or near the national forest being planned.

COURT CASES UPHOLDING LOCAL LAND USE PLANNING

California Coastal Commission v. granite Rock Co., 480 U.S. 572 (1987)

State land use planning is allowed on federal lands as long as such land use planning does not include zoning. Federal agencies cannot claim "Constitutional Supremacy" if the agency can comply with both federal law and local land use plan.

Wisconsin Public U.S. Intervenor v. Mortier, 111 S.Ct. 2475 (1991)

When considering preemption, the U.S. Supreme Court will not assume that the State's historic powers are superseded by federal law unless that is the clear manifest purpose of Congress.

ENDANGERED SPECIES ACT

The Montana Farm Bureau Federation, et al. v. Babbitt, No. 93-0168-E-HLR (Dec. 14, l943

The Fish and Wildlife Service is required to follow all procedural mandates in the Endangered Species Act (ESA) when listing a species as threatened or endangered, including (1) listing the species within one year of publication of the notice of proposed listing, otherwise Fish and Wildlife Service must withdraw the regulation, (2) providing actual notice to local governments prior to listing; (3) providing adequate public review of data used to list the species; and (4) adequately considering and responding to public comments regarding the proposed listing.

16 U.S.C. Section 1533(b)(5)(A)(ii)

> Not less than ninety days before the effective date of the regulation, the Fish and Wildlife Service is required to give actual notice to local governments of its intent to propose a for listing or change or propose critical habitat.

50 C.F.R. Section 423.16(c)(i)(ii)

> Once notified, the local government has the opportunity to comment on the proposed species listing or change or critical habitat designation.

16 U.S.C. Section 1533(i)

> The Fish and Wildlife Service must directly respond to the "State agency"

16 U.S.C. Section 1533(f)(5)

> Other federal agencies must also consider local government and public comments regarding the management of threatened or endangered species.

16 U.S.C. Section 1533 (b)(1)(A)

> The listing of a species as threatened or endangered by the Fish and Wildlife Service is to be based on the best scientific and commercial data available.

16 U.S.C. Section (b)(1)(A)

> The Fish and Wildlife Service shall list species only after taking into account efforts of of state or political subdivisions to protect species.

16 U.S.C. Section 1533(b)(2)

> Critical habitat designations must take economic impacts into account. Areas may be excluded as critical habitat based upon economic impacts unless the failure to designate the area as critical habitat would result in extinction of the species.

Douglas County v. Lujan 810 F. Supp. 1470 (1992)

The Fish and Wildlife Service is required to complete full National Environmental Policy Act (NEPA) documentation when designating critical habitat.

16 U.S.C. Section 1533 (f)(1)

> The Fish and Wildlife Service shall develop and implement recovery plans for the for the survival of endangered species unless it finds that such a plan will not provide for conservation of the species.

National Wildlife Federation v. Coleman 529 F2d 359 (1976) cert. denied 429 U.S. 979 (1977)

Pursuant to the Endangered Species Act, the Fish and Wildlife Service is responsible for species listing, the designation of critical habitat and the development of protective regulations and recovery plans. Once a species is listed, federal agencies have the responsibility to consult with the Fish and Wildlife Service under Section 7 of the ESA. However, once consultation has occurred, the agency is then free to make the final determination. The Fish and Wildlife Service does not have veto power over federal agency actions.

54 Fed. Reg. 554 (January 6, 1989)

> The Sensitive Species Program was created on January 6, 1989 by the Fish and Wildlife Service is implemented by all federal agencies. These federal agencies are to give "special consideration" to those plant and animal species that the Fish and Wildlife Service is considering for listing but lacks the scientific data to list.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The National Environmental Policy Act requires that all federal agencies consider the impacts of their actions on the environment and on the preservation of the culture, heritage, and custom of local government.

16 U.S.C. 4331

"It is the continuing responsibility of the federal government to use all practicable important historic, cultural, and natural aspects of our national heritage , and maintain, wherever possible, an environment which supports diversity and variety of individual choice."

Thus, by definition, the National Environmental Policy Act requires federal agencies to to consider the impact of their actions on the custom of the people as shown by their beliefs, social forms, and "material traits". It is reasonable to read this provision of the National Environmental Policy Act as requiring that federal agencies consider the impact of their actions on rural resource-dependent counties. Flathead County is such a county. For generations, families have depended upon the "material traits" of ranching, farming. mining, timber production, wood products, hunting, fishing, outdoor recreation, and other resource-based lines of lines of work for their economic livelihoods.

42 U.S.C. Section 4332 (2)(c)

All federal agencies shall prepare an environmental impact statement (EIS) or an environmental assessment (EA), (i.e. a NEPA document) for "every recommendation or report on proposals for legislation and other major federal action significantly affecting the quality of the human environment."

42 U.S.C. Section 4332(c)(iii)

Such EIS or EA shall include, among other things, alternatives to the proposed action.

42 U.S.C. Section 4332 (c)

Copies of comments by State or local governments must accompany the EIS or EA throughout the review process.

40 C.F.R. Section 1502.16(C)

Each NEPA document shall include a discussion of possible conflicts between the proposed federal action and local land use plans.

40 C.F.R. 1506.2(b)

Federal agencies shall "cooperate to the fullest extent possible" to reduce duplication with state and local requirements. Cooperation shall include:

(1) Joint planning

(2) Joint environmental research.

(3) Joint hearings

(4) Joint environmental assessments.

40 C.F.R. Section 1506.2(d)

> Environmental impact statements must discuss any "inconsistency of proposed plan with any approved state or local plan and laws (whether or not federally sanctioned)." Where inconsistencies exist, the EIS should describe the extent to which the agency would reconcile the proposed action to the plan or law.

40 C.F.R. Section 1508.20(e)

> Mitigation includes (a) avoiding the impact altogether, (b) limiting the degree of the impact, (c) repairing, rehabilitating or restoring the affected environment, (d) reducing the impact by preservation opportunities, or (e)compensating for the impact by replacing or providing substitute resources or environments.

Douglas County v. Lujan 810 F. Supp. 1470 (1992)

A local government, because of a concern for its environment, wildlife, socio-economic impacts, and tax base, has standing to sue federal agencies and seek relief for violations of NEPA.

WILD AND SCENIC RIVERS ACT

16 U.S.C. Section 1271

It is Congressional policy to protect "...historic, cultural or other similar values in free-flowing rivers or segments thereof".

16 U.S.C. Section 1279 (b)

Wild and scenic river designations on federal lands cannot affect valid existing rights.

16 U.S.C. Section 1282 (b)

The Secretary of the Interior, the Secretary of Agriculture, or the head of any other Federal agency, shall assist, advise and cooperate with states or their political subdivisions… to plan, protect, and manage river resources. Such assistance, advice and cooperation may be through written agreements or otherwise.

16 U.S.C. Section 1276 (c)

The study of any river for designation under the Act shall be pursued in as close cooperation with appropriate agencies of the affected state and its political subdivisions as possible, (and) shall be carried on jointly if request for such joint study is made by the state ..."

16 U.S.C. 1281 (e)

The Federal agency charged with the administration of any component of the national wild and scenic rivers system "may enter into written cooperative agreements with the appropriate official of a political subdivision of a state for state or local governmental participation in the administration of the component."

16 U.S.C. 1283 (c)

Wild and scenic river designations cannot affect valid existing leases, permits, contracts or other rights.

16 U.S.C. 1277 (c)

The federal government is precluded from condemning or taking private land adjacent to a wild or scenic river so long as the local zoning ordinances protect the value of the land.

HISTORIC PRESERVATION ACT REGULATIONS

36 C.F.R. Section 800.5(e)(1)(i)

If a federal, state, or local action is determined to have an adverse affect on a historic property, the state and federal Historic Preservation officer shall consult with the head of the local government, if requested by local government.

CLEAN AIR ACT

33 C.F.R. 1251 (g)

Federal agencies shall cooperate with state and local agencies to develop comprehensive solutions to prevent, reduce, and eliminate pollution in concert with programs for managing water resources.

33 U.S.C. Section 1252 (A)

The Environmental Protection Agency (EPA) "shall, after careful investigation, and in cooperation with other federal agencies, state water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs" for preventing water pollution.

RURAL ENVIRONMENTAL CONSERVATION ACT

16 U.S.C. Section 1508

"The Secretary [of Agriculture] shall, in addition to appropriate coordination with other Interested federal, state, and local agencies, utilize the services of local, county, and state soil conservation committees."

RESOURCE CONSERVATION ACT OF 1981

16 U.S.C. Section 3411 (5)

"Congress finds solutions to "chronic erosion-related problems should be designed to address the local social, economic, environmental, and other conditions unique to the area involved to ensure that goals and policies of the federal government are effectively integrated with the concerns of the local community ..."

16 U.S.C. Section 3432

"The local unit of government is encouraged to seek information from and the cooperation of ...(2) agencies of the Department of Agriculture or other federal agencies ..."

16 U.S.C. Section 3451

"It is the purpose of this subtitle to encourage and improve the capability of state and local units of government and local nonprofit organizations in rural areas to plan, develop, and carry out programs for resource conservation and development."

16 U.S.C. Section 3455

"In carrying out the provisions of this subtitle, the Secretary [of Agriculture] may (2) cooperate with other departments and agencies of the federal government, state, and local units of government and with local nonprofit organizations in conducting surveys and inventories, disseminating information, and developing areas plans ..."

16 U.S.C. Section 3456 (a)(4)

"The Secretary of Agriculture may provide technical and financial assistance only if "the works of improvement provided for in the area plan are consistent with any current comprehensive plan for such area."

PRESIDENTIAL EXECUTIVE ORDER 12886

REGULATORY PLANNING AND REVIEW (September 30, 1993)

INTRODUCTION:

> "The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves health, safety, environment, and well being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are best engine for economic growth; regulatory policies that respect the role of state, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a system today."

Section I (b)(9)

> "Wherever feasible, agencies shall seek views of appropriate state, local and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of federal regulations on state, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, appropriate agencies shall seek to harmonize federal regulatory actions with related state, local and tribal regulatory governmental functions."

Section 5(b)

> "State, local and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest."

Section 6 (a)(1)

> "In particular, before issuing a notice of proposed rule making, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those who are expected to be burdened by any regulation (including, specifically, state, local and tribal officials)... Each agency also is directed to explore and, where appropriate, use con sensual mechanisms for developing regulations, including negotiated rule making."

PRESIDENTIAL EXECUTIVE ORDER 12630

GOVERNMENTAL ACTIONS AND INTERFERENCE WITH CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS (March 15, 1988)

Section 1(a)

> "The Fifth amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation...Recent Supreme court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

Section 1(c)

> "The purpose of this Order is to assist federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections afforded by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public risk resulting from governmental action."

Section 3(c)

> "The Just Compensation Clause {of the Fifth Amendment] is self actuating, requiring that compensation be paid whenever governmental action results in taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have significant impact on the use of value or private property should be scrutinized to avoid undue or unplanned burdens on the public risk."

PRESIDENTIAL EXECUTIVE ORDER 13352

Facilitation of Cooperative Conservation, August 26, 2004

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. The purpose of this order is to ensure that the Departments of the Interior, Agriculture, Commerce, and Defense and the Environmental Protection Agency implement laws relating to the environment and natural resources in a manner that promotes cooperative conservation, with an emphasis on appropriate inclusion of local participation in Federal decision making, in accordance with their respective agency missions, policies, and regulations.

Sec. 2 Definition. As used in this order, the term "cooperative conservation" means actions that relate to use, enhancement, and enjoyment of natural resources, protection of the environment, or both, and that involve collaborative activity among Federal, State, local, and tribal governments, private for-profit and nonprofit institutions, other non government entities and individuals.

Sec. 3. Federal Activities. to carry out the purpose of this order, the Secretaries of the Interior, Agriculture, Commerce, and Defense and the Administrator of the Environmental Protection Agency shall, to the extent permitted by law and subject to the availability of appropriations and in coordination with each other as appropriate:

(a) carry out the programs, projects, and activities of the agency that they respectively head that implement laws relating to the environment and natural resources in a manner that:

(i) facilitates cooperative conservation;

(ii) takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land and other natural resources;

(iii) properly accommodates local participation in Federal decision making; and

(iv) provides that the programs, projects, and activities are consistent with protecting public health and safety;

(b) report annually to the Chairman of the Council on Environmental Quality on actions taken to implement this order; and

(c) provide funding to the Office of Environmental Quality Management Fund (42 U.S.C. 4375) for the Conference for which section 4 of this order provides.

Sec. 4. White House Conference on Cooperative Conservation. The Chairman of the Council on Environmental Quality shall, to the extent permitted by law and subject to the availability of appropriations:

(a) convene not later than 1 year after the date of this order, and thereafter at such times as the Chairman deems appropriate, a White House Conference on Cooperative Conservation (Conference) to facilitate the exchange of information and advice relating to (i) cooperative conservation and (ii) means for achievement of the purpose of this order: and

(b) ensure that the Conference obtains information in a manner that seeks from Conference participants their individual advice and does not involve collective judgment or consensus advice or deliberation.

Sec. 5. General Provision. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its department, agencies, instrumentalities or entities, its officers, employees or agent, or any other person.

GEORGE W. BUSH
THE WHITE HOUSE
August 26, 2004

COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON. D.C. 20503
.January 30, 2002

MEMORANDUM FOR THE HEADS OF FEDERAL AGENCIES

FROM: JAMES CONNAUGHTON

SUBJECT: COOPERATING AGENCIES IN IMPLEMENTING THE PROCEDURAL ; REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

The purpose of this Memorandum is to ensure that all Federal agencies are actively considering designation of Federal and non-federal cooperating agencies in the preparation of analysis: and documentation required by the National Environmental Policy Act (NEP A), and to ensure that Federal agencies actively participate as cooperating agencies in other agency's NEPA processes. I The CEQ regulations addressing cooperating agencies status (40 C.F .R. ¤¤ 150.1.6 & 1508.5) implement the NEPA mandate that Federal agencies responsible for preparing NEPA analyses and documentation do so "in cooperation with State and local governments" and other agencies with jurisdiction by law or special expertise. (42 U.S.C. ¤¤ 4331(a), 4332(2)). Despite previous memoranda and guidance from CEQ, some agencies remain reluctant to engage other Federal and non-federal agencies as a cooperating agency. in addition, some Federal agencies remain reluctant to assume the role of a cooperating agency, resulting in an inconsistent implementation of NEPA.

Studies regarding the efficiency, effectiveness, and value of NEPA analyses conclude that stakeholder involvement is important in ensuring decision rnakers have the environmental information necessary to make informed and timely decisions efficiently.3 Cooperating agency status is a major component of agency stakeholder involvement that neither enlarges nor diminishes the decision making authority of any agency) involved in the NEPA process. This memo does not expand requirements or responsibilities~ beyond those found in current laws and regulations. nor does it require an agency to provide financial assistance to a cooperating agency.
~The benefits of enhanced cooperating agency participation in the preparation of NEPA analyses include disclosing relevant information early in the analytical process applying available technical expertise and staff support; avoiding duplication with other Federal, State, Tribal and local procedures; and establishing a mechanism for addressing intergovernmental issues. Other benefits of enhanced cooperating agency participation include fostering intra- and intergovernmental trust (e.g.. partnerships at the community level) and a common understanding and appreciation for various governmental roles in the NEP A process, as well ~ enhancing agencies' ability to adopt environmental documents. It is incumbent on Federal agency officials to identify as early as practicable in the environmental planning process those Federal. State, Tribal and local government agencies that have jurisdiction by law and special expertise with respect to all reasonable alternatives or significant environmental, social or economic impacts associated with a proposed action that requires NEPA analysis.

I Cooperating agency status under NEPA is nor equivalent to other requirements calling for an agency to engage another governmental entity in a consultation or coordination process (e.g., Endangered Species Act section 7 ,National Historic Preservation Act section 106). Agencies are urged to integrate NEPA requirements with other environmental review and consultation requirements (40 C.F.R. ¤ 1500.2(cÈ); and reminded that not establishing or ending cooperating agency status does not satisfy or end those other requirements.

2 Memorandum for Heads of Federal Agencies, Subject: Designation of Non-Federal Agencies to be Cooperating Agencies in [implementing the Procedural Requirements of the National Environmental Policy Act, dated July 28, 1999; Memorandum for Federal NEPA Liaisons, Federal, State. and Local Officials and Other Persons Involved in the NEPA Process,

Subject: Questions and Answers About the NEPA Regulations (NEPA's Forty Most Asked Questions). dated March 16, 1981, published at 46 Fed. Reg. 18026 (Mar. 23,1981), as amended.

~ .1 E.g.", *The National Environmental Policy: Act- .4 Study of its Effectiveness After Twenty-Five Years,* CEQ, January.(*f* 1997

The Federal agency responsible for the NEPA analysis should determine either such agencies are interested and appear capable of assuming the responsibilities of becoming a. cooperating agency under 40 C.F .R. ¤ 150 1.6. Whenever invited Federal. State, Tribal and local agencies elect not to become cooperating agencies, they should still be considered for inclusion in interdisciplinary teams engaged in the NEP A process and on distribution lists for review and comment on the NEP A documents. Federal agencies declining to accept cooperating agency ~ status in whole or in part are obligated to respond to the request and provide a copy of their response to the Council. (40 C.F.R. ¤ l501.6(c)).

In order to assure that the NEPA process proceeds efficiently. agencies responsible for NEP A analysis are urged to set time limits, identify milestones, assign responsibilities for analysis and documentation. specify the scope and detail of the cooperating agency's contribution, and establish other appropriate. ground-rules addressing issues such as availability of pre-decisional information. Agencies are encouraged in appropriate cases to consider documenting their expectations, roles and responsibilities (e.g., Memorandum of Agreement or correspondence). Establishing such a relationship neither creates a requirement nor constitutes a presumption that a lead agency provides financial assistance to a cooperating agency.

Once cooperating agency status has been extended and accepted. circumstances may arise when it is appropriate for either the lead or cooperating agency to consider ending cooperating agency status. This Memorandum provides factors to consider when deciding whether to invite, accept or end cooperating agency status. These factors are neither intended to be all-inclusive nor a rote test. Each determination should be made on a case-by-case basis considering all relevant information and factors, including requirements imposed on State, Tribal and local governments by their governing statutes and authorities. We rely upon you to ensure the reasoned use of agency discretion and to articulate and document the bases for extending, declining or ending cooperating agency status. The basis and determination should be included in the administrative record.

CEQ regulations do not explicitly discuss cooperating agencies in the context of .Environmental Assessments (EAs) because of the expectation that EAs will not only be brief, concise documents that would not warrant use of formal cooperating agency status. However, agencies do at times -particularly in the context of integrating compliance with other environmental review laws -develop EAs of greater length and complexity than those required under the CEQ regulations. While we continue to be concerned about needlessly lengthy EAs (that may, at times, indicate the need to prepare an Environmental Impact Statement (EISÈ), we recognize that there are times when cooperating agencies will be useful in the context of EAs. For this reason, this guidance is recommended for preparing BAs. However, this guidance does not change the basic distinction between EISs and BAs set forth in the regulations or prior guidance.

To measure our progress in addressing the issue of cooperating agency status, by October 311 2002 agencies of the Federal government responsible for preparing NEPA analyses (e.g., the lead agency) shall provide the first bi-annual report regarding all EISs and EAs ~ during the six-month period between March 1, 2002 and August 31, 2002. This is a periodic reporting requirement with the next report covering the September 1002- February 2003 period due on April 30,2003. For EISs, the report shall identify: the title; potential cooperating agencies; agencies invited ~o participate as cooperating agencies; agencies that requested cooperating agency status; agencies which accepted cooperating agency status; agencies whose cooperating agency status ended; and the current status of the EIS. A sample reporting form is at attachment 2. For EAs, the report shall provide the number of EAs and those involving

cooperating agency(s) as described in attachment 2. States, Tribes, and units of local governments that have received authority by Federal law to assume the responsibilities for preparing NEPA analyses are encouraged to comply with these reporting requirements.

If you have any questions concerning this memorandum, please contact Horst G. Greczrniel, Associate Director for NEP A Oversight at 202-395-5750, .
f Horst_Greczmiel@ceq.eop.gov, or 202-456-0753 (fax).

# # #

Factors for Determining Whether to Invite, Decline or End Cooperating Agency Status

1. Jurisdiction by law (40 C.F.R. ¤ 1508.15) -for example, agencies with the authority to grant permits for implementing the action [federal agencies~ be a cooperating agency {1501.6); non-federal agencies ~be invited (40 C.F.R. ¤ 1508.5)]:

+.Does the agency have the authority to approve a proposal or a portion of a proposal?
. +Does the agency have the authority to veto a proposal or a portion of a proposal?
+.Does the agency have the authority to finance a proposal or a portion of a proposal?

2. Special expertise (40 C.F.R. ¤ 1508.26) -cooperating agency status for specific purposes linked to special expertise requires more than an interest in a proposed action [federal and non-federal agencies ~ be requested (40 C.F.R. ¤¤ 1501.6 & 1-,508.5)]:

+.Does the cooperating ageI,1cy have the expertise needed to help the lead agency meet a s statutory responsibility?
+.Does the cooperating agency have the expertise developed to carry out an agency m mission?
+.Does the cooperating agency have the related program expertise or experience.
+.Does the cooperating agency have the expertise regarding the proposed actions' relationship to the objectives of regional, State and locallat1d use plans, l policies and controls {1502.16(cÈ?

3. Do the agencies understand what cooperating agency status means and can they legally enter into an agreement to be a cooperating agency?

4. Can the cooperating agency participate during scoping and/or tl1foughout the preparation of the analysis and documentation as necessary and meet milestones established for completing t1le process?

5. Can the cooperating agency, in a timely manner, aid in:

+.identifying significant environmental issues [including aspects of the human environment (40 C.F.R. ¤ 1508.14), including natural, social, economic, energy, urban quality, historic and cultural issues (40 C.F.R. ¤ 1502.16)]?
+.eliminating minor issues from further study?
+.identifying issues previously the subject of environmental review or study?
+ identifying the proposed actions' relationship to the objectives of regional, State and local land use plans, policies and controls (1502.l6(c))?

(40 C.F.R. ¤¤ 1501.1(d) and 1501.7)

6. Can the cooperating agency assist in preparing portions of the review and analysis and
- resolving significant environmental issues to support scheduling and critical milestones?

Attachment 1 PaC7e 1

7. Can the cooperating agency provide resources to support scheduling and critical milestones such as:

+.personnel? Consider all forms of assistance (e.g., data gathering; surveying; compilation; research..
+expertise? This includes technical or subject matter expertise-.
+funding? Examples include funding for personnel, travel and studies. Normally, the cooperating agency will provide the funding; to the extent available funds permit, the lead agency shall fund or include in budget requests funding for an analyses the lead agency requests from cooperating agencies. Alternatives to travel, such as telephonic or video conferencing, should be considered especially when funding constrains participation.
+.models and databases? Consider consistency and compatibility with lead and other cooperating agencies' methodologies.
+facilities, equipment and other services? This type of support is especially relevant for smaller governmental entities with limited budgets. .

8. Does the agency provide adequate lead-time for review and do the oilier agencies provide adequate time for review of documents, issues and analyses? For example, are either the lead or cooperating agencies unable or unwilling to consistently participate in meetings in a timely fashion after adequate time for review of documents, issues and analyses?

9. Can the cooperating agency(s) accept the lead agency's final decisionmaking authority regarding the scope of the analysis, including authority to define the purpose and need for the proposed action? For example, is an agency unable or unwilling to develop information/analysis of alternatives they favor and disfavor?

10. Are the agency(s) able and willing to provide data and rationale underlying the analyses or assessment of alternatives?

11. Does the agency release predecisional information (including working drafts) in a manner that undern1ines or circumvents the agreement to work cooperatively before publishing draft or final analyses and documents? Disagreeing with the published draft or final analysis should not be a ground for ending cooperating status. Agencies must be alert to situations where state law requires release of information.

12. Does the agency consistently misrepresent the process or the findings presented in the analysis and documentation?

_____

The factors provided for extending cooperating agency status are not intended to be all- inclusive. Moreover, satisfying all the factors is not required and satisfying one may be sufficient. Each determination should be made on a case-by-case basis considering all relevant information and factors.

" February 4, 2002

MEMORANDUM FOR STATE AND LOCAL GOVERNMENTAL ENTITIES

FROM: JAMES CONNAUGHTON, Chair

SUBJECT: COOPERATING AGENCIES IN IMPLEMENTING THE PROCEDURAL REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

The Council on Environmental Quality (CEQ) regulations addressing cooperating agencies status implement the NEPA mandate that Federal agencies responsible for preparing NEPA analyses and documentation do so "in cooperation with State and local governments" and other agencies with jurisdiction by law or special expertise. The attached memorandum
reminds Federal agencies of the importance of including State, Tribal and local governmental entities in the NEPA process and emphasizes the importance of establishing cooperating agency status when appropriate.

In cases where you have either jurisdiction by law or special expertise you should consider accepting or requesting an invitation to participate in the NEPA process as a cooperating agency. .(n those cases where cooperating agency status is not appropriate, you should consider opportunities to provide information and comments to the agencies preparing the NEPA analysis and documentation. CEQ supports your involvement in ensuring " that decision makers have the environmental information necessary to make informed and timely decisions efficiently.

The benefits of enhanced cooperating agency participation in the preparation of Environmental Assessments (EAs) and Environmental Impact Statements (EISs), described in the enclosed memorandum include .fostering intergovernmental trust (e.g., partnerships at the community level) and a common understanding and appreciation for various governmental roles in the NEPA process. It is important for you to consider your authority and capacity to assume the responsibilities of a cooperating agency and to remember that your role in the environmental analysis neither enlarges nor diminishes the final decisionmaking authority of any agency involved in the NEPA process.

If you have any questions concerning this memorandum, please contact Horst G. Greczmiel, Associate Director for NEPA Oversight at 202-395- 5750, Horst_Greczmiel@ceq.eop.gov, or 202-456-0753 (fax).

Sample Letters of Request to Federal Agencies

Via Certified/Return Receipt Mail
Certified Number

Federal Agency
Address

Re: Request to Participate in NEPA Process as Joint Lead or Cooperating Agency

Dear :

Pursuant to 40 C.F.R. ¤ 1506.2(b), the purpose of this letter is to request that_____ _____(name of local government) be granted joint lead or cooperating agency status in the completion of the environmental assessment or environmental impact statement Pursuant to the National Environmental Policy Act (NEPA) for the_____*name of project.)* Pursuant to the regulations implementing NEPA, to which all federal agencies must comply (40 C.F.R. ¤ 1507. 1) state and local governments may be granted lead agency status (see 40 C.F.R. ¤¤1508.16 and 1508.12) or cooperating agency status when the state or local government has "special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment." 40 C.F.R. ¤ 1508.5. In this case, _____*(name of local government)* has special expertise relating to the analysis of the federal agency's proposed decision on the physical environment, custom, culture and local tax base. For example,
add other information such as the existence of a local land use plan, or other information showing that your local government has special expertise that the federal government does not have. You may also want to describe why you believe the federal project will affect your local citizens, environment and tax base.

Additionally, according to the regulations, federal agencies shall cooperate to the fullest extent possible with state and local agencies. The regulations specifically state:

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.
(2) Joint environmental research studies.
(3) Joint public hearings (except where otherwise provided by statute).
(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so y some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or 81 local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.
40 C.F.R. ¤ 1506.2(b)(c)(d).

Thus, to ensure that the federal agency fully and adequately considers the affect of its proposed decision on the physical environment, customs, culture and tax base of the citizens of _____County, _____ requests to be named as a joint lead or cooperating agency.

Thank you for your attention in this matter.

Sincerely:

APPENDIX D: NATURAL RESOURCE COMMITTEE

Due to the importance of natural resources in the County, the Flathead County Planning Board recommended creating a Natural Resources Use Committee with no less than seven members, including one commissioner. The goal of such a committee was to draft a separate and extensive document analyzing the various aspects of natural resources in the County.

Times of all meetings were to be published and open to the public. Public input is recognized as an integral part of process.

1.) All members of the Resource Committee shall be residents of Flathead County.

2.) Upon adoption of this Ordinance, the Resource Committee shall be composed of citizens of the County who are willing to dedicate themselves and their time to this county planning effort.

3.) At a later time, the Resource Committee will adopt administrative rules or by-laws by which they will operate. Some of those rules may include term limits, number of committee members, addition or deletion of subcommittees, guidelines to promote diversity in age, experience, and interests, how to handle vacancies, and other matters as necessary.

4.) The Resource Committee has a chairperson, vice-chairperson, secretary, and writer-editor chosen from its membership and approved by the Flathead County Planning Board and Flathead County Commissioners.

The Resource Committee may form subcommittees as needed. A subcommittee will have at least one member of the Resource Committee in attendance.

Flathead Natural Resource Committee

2004		**2005**	
Ronald Buentemeier	Chairperson	Ronald Buentaemeier	Chairperson
Fred Hodgeboom,	Vice Chairperson	Fred Hodgeboom	Vice Chairperson
Clarice Ryan,	Secretary	David Hadden	Secretary
Charles Samuelson	Writer-editor	Kathy Robertson	Editor
Gary Hall		Charles Samuelson	
Kathy Robertson		Gary Hall	
Clarance Taber		Thor Jackola	

APPENDIX E:

Ten-Year Average Annual Payments to Montana Counties by U.S. Forest Service

Rank	National Forest Acreage	Ten Year	Payment
1 Lincoln	1,762,163	$4,655,346	$2.64
2 Sanders	914,714	1,297,290	1.4182
3 Mineral	646,889	618,988	0.9569
4 Missoula	693,027	574,577	0.8291
5 Flathead	1,787,379	1,038,272	0.5809
6 Powell	640,698	350,971	0.5478
7 Granite	662,466	345,429	0.5214
8 Lake	156,602	80,615	0.5148
9 Jefferson	463,507	209,379	0.4517
10 Lewis & Clark	986,964	345,186	0.3497
11 Broadwater	186,491	64,591	0.3463
12 Silver Bow	190,045	50,381	0.2651
13 Fergus	94,971	21,251	0.2238
14 Pondera	106,630	23,859	0.2238
15 Glacier	28,688	6,419	0.2238
16 Teton	234,988	52,579	0.2238
17 Judith Basin	297,427	66,549	0.2237
18 Chouteau	30,713	6,872	0.2237
19 Cascade	178,658	39,973	0.2237
20 Golden Valley	23,693	5,301	0.2237
21 Meagher	479,047	107,166	0.2237
22 Wheatland	64,919	14,422	0.2222
23 Ravalli	1,116,162	219,030	0.1962
24 Deer Lodge	177,450	33,242	0.1873
25 Gallatin	607,392	83,903	0.1381
26 Park	816,632	111,205	0.1362
27 Madison	804,638	104,608	0.13
28 Sweetgrass	287,563	37,136	0.1291
29 Carbon	324,818	36,538	0.1125
30 Powder River	339,689	37,136	0.1093
31 Carter	89,384	9,763	0.1092
32 Rosebud	95,822	10,463	0.1092
33 Stillwater	186,320	20,344	0.1092
34 Beaverhead	1,370,363	136,897	0.0999

Data Compiled From USFS - ASR-08-10 Reports.

APPENDIX F: COMPENSATION TO COUNTIES FOR FEDERAL LANDS

Flathead County encompasses 3,262,720 acres. 2,453,258 of those acres are under federal ownership leaving 709,462 acres or 22% of private and State Forest Land.

With 78% of the Flathead County land mass under federal ownership the remaining lands have to produce revenues to maintain county governmental services to be borne by that land and its citizens. Two laws were passed by the U.S. Congress to assist the counties with large amounts of federal lands to maintain roads, schools, and all other local government services within counties. In 2000 another law was passed and combined with the original two laws.

The Weeks Law of 1911, increased from 10% to 25% funding (amended), to counties the revenues received through sale of timber products and other user fees. The 25% funds could only be spent on roads (80%) and schools (20%) of the annual amounts appropriated to counties. Payments In Lieu of Taxes (PILT), Public Law, PL94-565, 10/20/76, (amended) reimbursed counties, at mostly reduced rates, for lost property taxes by the federally controlled lands within the county versus private lands tax levies. The PILT funds could be spent for any beneficial use by the county government. They are no longer identifiable in records as explained below.

In 2000, the U.S. Congress passed the Secure Rural Schools and Community Self-Determination Act of 2000 (P.L. 106.393). It was enacted to restore stability and predictability to the annual 25% fund payments made to counties. The SRSCSDA (P.L.106-393) was amended to statutes listed in Sec. 6903 of the PILT (P.L 106-393) and decouples the Weeks Law (25% Fund) from the dependence of relying on the past history of local forests to produce revenue. The SRSCSDA Act of 2000 sunsets in 2006. Because of the precipitous decline of timber sales beginning in the early 1990's, Flathead County elected to take the average of the three highest payments between 1986 and 1999. Of the 34 eligible Montana counties, 31 have chosen the payment amount established by PL106-393.

Counties electing the new full payment amount and receiving more that $100,000 are required to spend no less than 80 percent and no more than 85 percent in the same way the 25 percent funds were spent under the old 25 percent fund system. The remaining fifteen to twenty percent must be allocated to projects under Title II of PL106-393, projects under Title III, or if funds remain unallocated, returned to the Treasury of the United States. Title II projects include projects on federal lands or projects that benefit federal lands. Title III projects are county projects that include search and rescue, community service work camps, easement purchases, forest-related education opportunities, fire prevention and county planning, or cost-share for urban community forestry projects.

PL 106-393 also requires Resource Advisory Committee (RACS) be established to provide recommendations to the appropriate Secretary as to what projects should be considered for Title II funding. In Montana that is the Secretary of Agriculture. The RACs are chartered under the Federal Advisory Committee Act; and also may advise the counties on Title III projects. Flathead County has a RAC Committee.

Ten Year-Average Annual Receipts for Counties Having Over ONE MILLION Acres of National Forest Lands

COUNTY	National Forest Only Acres	25% Fund Receipts	PILT Acres	PILT Receipts	Total Income/year
Flathead	1,778,109	$1,038,272	2,440,178	$394,954	$1,433,226
Lincoln	1,746,854	4,655,346	1,748,177	$177,819	$4,833,165
Beaverhead	1,746,854	$136,897	2,045,318	$239,793	$376,690
Ravalli	1,109,553	$219.03	2,045,318	$538,647	$757,677

REFUGE REVENUE SHARING ACT (16 U.S.C. 715S, June 15, 1935)

Counties receive 25% of revenues generated by refuges. Lands acquired for refuges are removed from tax rolls. The act as amended allows the USFWS to offset the tax losses by annually paying the county or other local unit of government an amount that often equal or exceeds that which would have been collected from taxes if in private ownership.

ENTITLEMENT ACREAGE FOR PAYMENT IN LIEU OF TAXES (PILT)

Flathead County ranks first in the State of Montana for total acres of combined U.S. Forest Service (1,778,114 acres), Bureau of Reclamation (29,767), National Park Service (632,303 acres), U.S.F.&W (13,074) administered lands. State Forest (DNRC) lands are not included.

Flathead County	2,453,258 acres
Beaverhead County	2,045,318 acres
Lincoln County	1,748,177 acres

NATIONAL FOREST 25% FUND PAYMENT** TO FLATHEAD COUNTY & FLATHEAD NATIONAL FOREST TIMBER CUT & SELL RECORD

In mil board ft 25% Fund Dollars Federal F. Y. change

Year	Sold	Cut	to Flathead County
1960	142,341	98,707	$204,949
1961	129,133	108,879	92,354
1962	135,058	126,697	188,921
1963	146,136	146,305	193,402
1964	135,052	135,147	231,558
1965	134,198	145,533	269,856
1966	138,406	167,644	228,954
1967	141,701	138,572	279,725
1968	147,497	156,161	426,065
1969	150,527	167,780	872,846
1970	231,680	145,855	415,150
1971	153,818	149,060	387,534
1972	131,921	156,425	816,235
1973	120,248	118,363	764,735
1974	111,140	132,582	893,359
1975	148,437	114,619	508,823
1976	123,064	154,739	634,068
1977	121,124	121,513	2,169,194
1978	95,141	80,079	1,460,934
1979	73,562	95,978	1,717,823
1980	194,340	92,936	1,669,791
1981	46,675	108,417	1,958,123
1982	178,740	54,441	868,737
1983	129,048	83,089	878,898
1984	81,844	116,993	1,374,309
1985	98,769	88,143	989,342
1986	72,831	116,538	1,124,929
1987	80,772	119,945	1,049,606
1988*	71,852	122,437	1,906,990
1989	36,793	91,330	1,148,577
1990	46,221	60,791	1,038,129
1991	43,320	48,199	966,823
1992	55,709	53,300	1,352,246
1993	5,560	54,371	1,624,266
1994	9,220	20,294	839,561
1995	12,930	21,753	983,221
1996	39,474	18,034	795,425
1997	32,198	22,084	635,733
1998	13,616	33,875	909,399
1999	6,295	13,880	805,726
2000	4,635	8,901	361,082
2001**	17,000	5,996	1,368,715
2002**	31,200	6,100	1,441,781
2003**	33,500	29,700	1,094,835
2004			1,289,535

*Denotes the first year of the inclusion of firewood permits in the annual cut volumes.

** Denotes a change in 25% fund payments to Counties under Public Law 106-393 of October 2000.Flathead County elected the option to accept the average of the three highest fund payments to the County during the fiscal year 1986 through 1995. The option selected was due to the precipitous decline in the sell volume of timber on Flathead Forest beginning in the early 1990's. Public Law 106-393 will sunset in 2006.

APPENDIX G: GLACIER PARK - STATISTICS - FIRE EFFECTS & VISITATION

An indication of the effect of wildfires on Park visitor attendance may be the comparison of visitation figures for low or non-fire years as opposed to those with heavy fire seasons. Following are statistics on record at Flathead Glacier National Park.

Year	Visitor Count	Acres Burned	Difference From Previous Year (Visitor)	Major Fires
2000	1,608,824	6,265	42,674	Moose Fire
2001	1,566,150	92,863		
2002	1,753,993	35	291,334	Wedge & Roberts Fire
2003	1,753,993	235520		
2004	1,753,993	N/AV		Low fire year

APPENDIX H: DUE PROCESS; The Elements of Fair Play

R. Marlin Smith: Partner, Ross, Hardies, O'Keefe, Babcock & Parsons

Land-use regulation is set against a constitutional backdrop that establishes certain limits for which such regulation. Two of the most important of these constitutional limitations come from the Fifth Amendment of the U.S. Constitution, which is made applicable to the state and its instrumentalities by the Fourteenth Amendment and which provides that no person may be "deprived of life, liberty or property, without due process of law . . . ." This requirement of due process has two aspects, commonly called procedural due process and substantive due process.

The constitutional requirement of procedural due process essentially requires that the procedures used in decision making -- whether it be administrative or judicial decision making -- be fair, giving all interested persons an adequate opportunity to make their views heard. Substantive due process is the term sometimes applied to the constitutional requirement that statutes, ordinances, rules, and decisions must not be arbitrary or capricious. That is, there must be a rational relationship between the exercise of legislative or rule-making authority and the achievement of some legitimate public purpose.

PROCEDURAL DUE PROCESS

The constitutional requirement of fair procedures has nine general aspects:

(1) NOTICE. Adequate and timely notice of proceedings and of the proposed decision-making or rule making process is a fundamental aspect of due process. The U.S. Supreme Court, in a frequently cited decision [Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 314 (1950), has said that notice must be". . . . reasonable calculated, under all the circumstances, to apprise interested parties of the tendency of the action and afford them an opportunity to present their objections . . . . The notice must be of such nature as reasonably to convey the required information . . . and it must afford a reasonable time for those interested to make their appearance. . . ."

Both the enabling acts of the various states and municipal zoning ordinances usually provide that notice of both legislative hearings and administrative hearings on zoning matters be given in some fashion to all interested parties. Due process requires that the owner of the land and other interested persons be given prior notice before any action is taken which would make a material change in the regulations applicable to a particular parcel, or group of parcels, of [Gulf and Eastern Development Corp, 331 N.E. 2nd 67 (Ill.. App. 1975); Nesbit v. City of Albuquerque, 575 P.2d 1340 (N.M. 1971)]. Publication is the most commonly required form of notice, although posting on the property affected is also frequently, required. In some circumstances, such as where a proposed condemnation is involved, publication and posting have been held insufficient notice [Schroeder v. City of New York, 71 U.S. 208 (1962)] Increasingly, statutes and municipal ordinances have required that notice be mailed, usually by certified mail, to property owners (or taxpayers of record) within a specified distance of the property which will be affected by the zoning action.

The notice must be adequate: the average citizen reading it, whose rights may be affected, must understand the general purpose, nature, and character of the proposed action [Moore v. Cataldo, 249 N.E. 2d (Mass. 1969); Nesbit v. City of Albuquerque, supra, Note 2 Yoga Society of New York v. Town of Monroe, 392 N.Y.S. 2d 81 (App. Div. 1977); Sellers v. City of Ashville, 236 S.E.2d 283 (n.Car.app. 1977); Barrie v. Kitsap County, 527 P.2d 1377 (Wash. 1974)].
Moreover, there is some authority for the view that an application for one type of zoning relief cannot rest on public notice for a different type of relief. Thus, for example, an applicant cannot be given a special-use permit when the notice stated that he was seeking a variation. [See, Foland v. Zoning Board of Appeals, 207 N.Y.S.2d 607 (N.Y.S. Ct. 1960) and Village of Larchmont v. Sutton, 217 N.Y.S.2d 929 (N.Y.S.Ct. 1961).]

The timeliness of the notice is also important. Minimum notice times are ordinarily specified in state enabling legislation and in municipal ordinances A zoning action that does not comply with these statutory time periods is invalid [Lunt v. Zoning Board of Appeals, 191 A.2d 553 (conn. 1963); Slagel v. Zoning Board of Appeals, 137 A.2d 542 (1957);

George v. Edenton, 230 S.E.2d 695 (N.Car.App. 1976); Sibarco Stations, Inc. v. Town Board of Vestal, 288 N.Y.S.2d 8 (N.Y.App.Div.1968)].

To summarize, procedural due process demands that there must be notice of an action, it must adequately apprise interested persons of the intended action, and it must be given within the prescribed time periods and within sufficient time to allow interested individuals to make appropriate preparations.

(2) OPPORTUNITY TO BE HEARD. It is central to the concept of procedural due process that all persons interested in a prospective decision be given an opportunity to offer their views and to supply evidence in their support. This concept is embodied in the virtually uniform requirement that there be no changes in zoning regulations, and that no special permits, special exceptions, or variations be granted until a public hearing has been held. The failure of a local legislative body to conduct an appropriate hearing that gives every one a fair opportunity to be heard may invalidate any subsequently adopted ordinance or regulation. [See, e.g., Bowen v. Story County Board of Supervisors, 209 N.W.2d 569 (Iowa 1973); Baltimore v. Mano Swartz, Inc.,299 A.2d 828 (Md. 1973); and Lima v. Robert Slocum Enterprises, 331 N.Y.S.2d 51 (App. Div. 1972).]

The hearing must be open to the public. Any decision that is based on proceedings held in a closed session, with the public excluded, will be held void [Blum v. Board of Zoning and Appeals, 149 N.Y.S2d 5 (N.Y.S.Ct. 1956)]. While there are some older court decisions that support the view that private deliberations prior to a public vote are permissible, and increasing number of states have adopted open meeting or "sunshine laws" which require that the deliberations of local governmental bodies, as well as the actual vote, be public. The Washington and Oregon courts have carried this requirement a step further by holding that local boards and commissions may not even receive information outside of the presence of all of the parties [Smith v. Skagit County,453 P.2d 832 (Wash. 1969) and Fasano v. Board of County Commissioners of Washington County,507 P.2d 23 (Ore. 1973)].

A hearing in which there is no meaningful opportunity to be heard and which in fact frustrates the right of persons to be heard is no hearing at all. One such case was described by Justice Grice of Georgia Supreme Court in Pendley v. Lake Harbin Civic Ass'n.[198 S.E.2d 503 (Ga. 1973)].

The evidence in this complaint for injunctive relief shows 36 zoning petitions were scheduled to be heard before the Commissioners of Clayton County on October 11, 1972, at 7:30 o'clock p.m.; that the hearings continued until 3:30 o'clock a.m., October 12, 1972; that from 1,200 to 1,500 people were present to attend the public meeting; that the hearings were held in the commissioners, hearing room, which accommodates approximately fifty people; that there were three other larger rooms in the courthouse where the hearings could have been legally held; that people were packed so closely in the entire corridor outside the hearing room that those interested in various petitions could not go close to the door, much less inside the hearing room.

The record discloses substantial evidence to support the findings of the trial judge, such as the following. One man swore that when he arrived for the hearing there was already an "enormous" crowd gathered in the hearing room and the hallway outside; that it took him thirty-five minutes to get from the hallway into the hearing room, which he managed only through the help of friends who were already inside; that there were no microphones in use and it was difficult to hear the proceedings even inside the hearing room; that when he asked commissioners to clear the hearing room to let in persons who want to speak pro or con on each petition in turn they took no action on the request; and that he then left the hearing room to enable some other interested person to have a chance to get in.

The Georgia court, in holding that there had been no public hearing under such circumstances, referred with approval to this ruling of the trial court:

Zoning is a matter of highest governmental business. The government's business should not be conducted in unreasonable places, at unreasonable hours. To do so would seem to defeat the intent of the General Assembly to insure reasonable, orderly, and public hearings when required by law. The court finds that conduction the county business of zoning after mid-night and into the early morning hours, and on a day other than as previously advertised, and in one of small public meeting rooms in the courthouse where only a small number of the

approximately 1,200 to 1,500 people present had access, was unreasonable to the extent that the general public was deprived of an effective, meaningful public hearing before the commissioners of Clayton County to which they were entitled by law.

Although the more generally accepted view is still that decisions with respect to the zoning of particular tracts of land are legislative decisions [see Meyer v. County of Madison, 287 N.E.2d 159 (Ill.App. 1972); Golden Gate Corp. v. Town of Narragansett,359 A.2d 321 (R.I. 1976); and Charlestown Homeowners Ass'n v. LaCoke, 507 S.W.2d 321 (R.I. 1974), there have been an increasing number of decisions which have followed the lead of the Oregon Supreme Court in Fasano v. Board of County Commissioners of Washington County [supra, Note 9], in holding that when the local legislative body is considering a rezoning or a request to use a tract of land in a particular way, then the decision is not legislative at all but is in fact a quasi-judicial decision [Snyder v. City of Lakewood, 542 P.2d 371 (Colo. 1975); Lowe v. City of Missoula, 525 P2d 551 (Mont. 1974); fleming v. City of Tacoma,81 Wash.2d 292, 502 P.2d 327 (1972); Golden v. Overland Park, 224 Kan. 591, 584 P.2d 130 (1978)]. The distinction is of great importance because, as the Fasano decision indicates, if the local hearing is regarded as quasi-judicial or adjudicative, rather than legislative, then all interested persons are entitled to a "trial type" hearing, whereas less rigorous procedures will satisfy due process requirements when the matter to be determined involves issues of legislative fact or recommendations with respect to public policy.

(3) THE RIGHT OF CROSS-EXAMINATION. When the hearing is regarded as adjective or quasi judicial, all parties must be accorded the opportunity to question their opponents and the opposing witnesses. Courts have generally been reluctant to hold that cross-examination is a necessary element of fair procedure in legislative hearings, perhaps because of a concern that local boards are inadequately equipped to deal with evidentiary rules. However, one recent Illinois decision has required that an opportunity to cross-examine be afforded in legislative hearings. In E & E Hauling v. County of DuPage, [396 N.E.2d 1260 (Ill.App. 19779)], the court held that a zoning board of appeals, sitting to consider a proposed rezoning with respect to which it would only make a recommendation to the county board, must not only give interested persons the right to appear and give evidence but must also give them the right to examine witnesses offered by opposing parties. In an earlier Connecticut decision, the Supreme Court of that state had explained why the right to cross-examination was an important aspect of fair procedures: "....[a zoning board] often deals with important property interests; and a denial of a right to cross-examination may easily lead to the acceptance of testimony at its face value when its lack of creditability or the necessity for accepting it only with qualifications can be shown by cross-examination" [Wadell v. Board of Zoning Appeals, 68 A.2d 152 (Conn. 1949)].

The Wadell decision makes a persuasive argument that, to the greatest extent possible, local zoning boards should not accept testimony offered at its face value. By permitting the cross-examination process to disclose the extent to which the testimony should be credited or qualified, local hearing will be made procedurally fairer.

(4) DISCLOSURE. There must be an opportunity to see, hear, and know all of the statements and evidence considered by the body making the local decision. Private communications with the decision makers, called ex parte communications, destroy the credibility of the hearing process and deprive it of an appearance of fairness. The decisions in the state of Washington have developed the requirement that a public hearing must not only be fair, it must appear to be fair. Thus, in Smith v. Skagit County [supra, Note 9; cf. Fasano v. Board of County Commissioners of Washington County, Supra, Note 9], the court invalidated a decision that rested in part on information received at a meeting from which the public and opponents of the proposal were excluded. In that case, the court explained:

It is axiomatic that, whenever the law requires a hearing of an sort as a condition precedent to the power to proceed, it means a fair hearing, in appearance as well. A public hearing, if the public is entitled by law to participate, means then a fair and impartial hearing. When applied to zoning, it means an opportunity for interested persons to appear and express their views regarding proposed zoning legislation .... The term 'public hearing' then presupposes that all matters upon which public notice has been given and on which public comment has been invited will be open to public discussion and that persons present in response to the public notice will be afforded reasonable opportunity to present their views, consistent, of course, with the time and space available. Where the law expressly gives the public a right to be heard . . . the public hearing must, to be valid, meet the test of fundamental fairness, for the right to be heard imports a reasonable expectation of being heeded. Just as a hearing fair in appearance but unfair in substance is no fair hearing, so neither is a hearing fair in substance but appearing to be unfair.

One of the commonest breaches of the right of interested parties to have an opportunity to be acquainted with, and to respond to, all of the information received by the decision-making body is the practice of considering staff reports which have not been circulated to the interested parties or which are not made available in advance of the hearing. It is not unusual for plan commissions and zoning boards to receive such staff reports at the last minute, or even after the public hearing has closed, without those reports ever having been distributed to members of the public and interested persons given the opportunity to peruse them and to respond to assertions made in them. The failure to disclose all of the information that is taken into account by the decision-making body destroys the fairness of the decision-making process and may be held to deprive the parties of procedural due process.

(5) FINDINGS OF FACT. When an administrative decision is involved, the findings or reasons for the decision are an essential aspect of due process. In some instances, the applicable statute or ordinance requires findings of fact and in others, the courts have imposed that requirement. [See, e.g., Shay v. District of Columbia Board of Zoning Adjustment, 334 A.2d 175 (D.C. App. 1975); Reichard v. Zoning Board of Appeals, 290 N.E.2d 349 (Iii.App. 1972); Metropolitan Board of Zoning Appeals v. Graves,360 N.E.848 (Ind. App. 1977); Bailey v. Board of Appeals of Holden, 345 N.E.2d 367 (Mass. 1976); and generally, 3 Rathkopf, The Law of Zoning and Planning, pp.37-69 to 37-70 (4th ed., 1980)].

Findings of fact are ordinarily not required where the decision is characterized as legislative one. This means that in most zoning actions findings of fact are not necessary. However, on consequence of the Fasano rule in the Washington court has been a requirement that rezoning decisions with respect to particular parcels of land, which are characterized as quasi-judicial, be supported by adequate findings is required, there must be a clear statement of what the decision-making body believed to be all of the relevant and important facts on which it based its decision. In that case, the court found that the very generalized findings were to incomplete and speculative to meet the requirement that there be adequate findings. Certainly it is not sufficient for the decision-making body simply to parrot the words of the statute and call its product findings of fact [Harber v. Board of Appeals, 228 N.E.2d 152 (Ill.App. 1967)].

Some years ago, Justice Smith of the Michigan Supreme Court, in Tireman-Joy-Chicago Improvement Ass'n. v. Chernick, [105 N.W.2d 105 (Mich. 1969)], gave vent to an expression of Judicial exasperation with generalized and uninformative Ôfindings' by a local zoning board:

Appellants complain of variances (exceptions) granted by defendant Board of Zoning Appeals without rhyme or reason. They say that the ordinance permitting the grant of variances is vaguely phrased and without specific standards (for example, "unnecessary hardship" is a ground). In addition they complain that the Board's action here was "wholly unwarranted under the facts." What, in truth, was the warrant for the Board's action? We are not told. The Board says we do not have to be told.

Thus, under the Board's argument, the citizen gets it going and coming. Were the legislative standards followed by the Board? There are no specific standards to be followed. What, then, are the reasons for the Board's finding the broad standard of "unnecessary hardship" to be satisfied? No one knows. No reasons are given, in other words it boils down to this: there is unnecessary hardship because there is unnecessary hardship, and, because there is unnecessary hardship, the standard (of unnecessary hardship) is satisfied. Thus by mumbling an incantation the bureaucrat forecloses effective judicial review.

Explicit and careful findings of fact enable all persons interested in the local decision to know just exactly what was decided. That, too, is an essential element of procedural due process.

(6) CONFLICTS ON INTEREST AND THE APPEARANCE OF CONFLICT OR IMPROPRIETY.

When a local official has a direct or indirect financial interest in the decision, that decision is infected with the potential bias of the individual and will not be permitted to stand. [See Low v. Madison, 60 A.2d 774 (Conn. 1948); Olley Valley Estates, Inc. v. Fussell, 208 S.E.2d 801 (Ga. 1974); and Crall v. Leonminister, 284 N.E.2d 610 (Mass. 1972).]

The appearance of fairness doctrine developed by the Washington courts, mentioned above, has been applied quite frequently to invalidate decisions in which the interest of one of the decisions makers deprives the decision of the

appearance of fairness. In Fleming v. City of Tacoma,[502 P.2d 327 (Wash. 1972)], one of the councilmen was employed as an attorney by the successful petitioners for a rezoning amendment less than 48 hours before the city council voted on the request. The Washington Supreme Court held that the proceeding in which the amendment was approved was fatally infected by the appearance of unfairness created by the councilman's conduct. Consequently, the ordinance was declared invalid-- even though the vote of the councilman in question was not necessary to pass the ordinance.

Subsequent Washington decisions have set aside a rezoning ordinance because two members of the planning commission were closely associated with a community organization whose members would benefit financially from the proposed rezoning [Save A Valuable Environment v. City of Bothel, 57 P.2d 401 (Wash. 1978)]. A decision has even been invalidated when it appeared that a member of the local decision-making body had an interest that might have influenced his vote, although in fact it did not [West Slope Community Council v. City of Tacoma, 569 P.2d 1183 (Wash. App. 1977)].

In Buell v. City of Bremerton, [495 P.2d 1358 (Wash. 1972)]. the court applied the appearance of fairness rule to invalidate a zoning decision when the chairman had a possible interest because his property might appreciate in value as a result of the zoning. The court noted that the fact that the action could be carried without counting the chairman's vote was not determinative; the self-interest of one member of the planning commission could affect the action of the other members of the commission regardless of the fact that they themselves were disinterested. A New York court has gone so far as to invalidate a local planning decision because the controlling vote was cast by a town board member who was a vice-president of a large advertising agency that the court assumed might be "a strong contender' for obtaining advertising contracts for the project. The court preferred to believe that the board members vote was prompted by the "jingling of the guinea" rather than by his conscience. So the court invalidated the decision, saying "like Caesar's wife, a public official must be above suspicion." [See Tuxedo Conservation and Taxpayers Asstn. v. Town Board of the Town of Tuxedo, 418 N.Y.S.2d 638 (App. Div. 1979).]

(7) PROMPT DECISIONS. Even adequate and timely notice, a full and completely fair public hearing, and absolute impartiality (free of any taint of bias) on the part of the decision-making official do not guarantee due process unless a decision is made promptly. The parties to a contested land-use decision have a right to expect prompt decisions, and failure to provide this is itself a failure to provide a fair procedures.

In recent years, especially in environmental impact litigation, there has been a tendency for opponents of the project to use the environmental review process solely for the purpose of securing a delay in the ultimate decision. The decision-making body that permits itself to be a party to such procrastination effectively denies one or more of the groups involved the process to which they are constitutionally entitled.

(8) RECORDS OF PROCEEDINGS. Finally, it is central to the concept of procedural due process that complete and accurate records be kept of proceedings -- more than just skeletal minutes of what transpired. all exhibits must be preserved and there must be a stenographic record of all testimony heard and all of the statements made. Anything less will deprive the judiciary of the opportunity to engage in a meaningful review when the dispute finally reaches the judicial system. In McLennan v. Zoning Hearing Board of Mount Pleasant Township, [304 A.2d 520 (Pa. Comm. 1973)], the court expressed its exasperation with being required to review Judicially a local zoning decision on a totally inadequate record: "These ordinances are absent from the record, and we are mystified as to how we are to decide this appeal without them. Additionally the Zoning Hearing Board merely kept a summary of the proceeding before it and made no stenographic record. In Camera, Jr. v. Danna Homes, Inc., 6 Pa. Commwlth. 417, 296 A.2d 283 (1972), we remanded because the testimony was paraphrased by the Board's secretary rather than taken verbatim."

Like the requirement that decisions be made promptly, the requirement that a complete and adequate record be kept is central to due process. No hearing can be considered to have been a fair hearing if the matters taken into account by the decision-making body cannot be reconstructed when its decision is reviewed by others.

(9) SOME GROUND RULES FOR FAIR HEARINGS. No local decision-making body can conduct business in an orderly and efficient manner unless it has a set of rules which are available to any person who appears before the body. Unless the participants in the local hearing process can know the ground rules that will govern the hearing, they cannot adequately prepare themselves for the hearing. Nothing more surely deprives and individual of due process than if the parties to a proceeding are permitted to guess at what the procedures will be or, even worse, to prepare on the assumption that one set of rules will be followed only to have them changed by the decision-making body at the last second.

A local decision-making body, such as zoning board or a plan commission, should, at the start of every hearing, recite briefly the rules that will be followed during the course of the hearing so that everyone understands in advance what procedures will be employed.

Disclosure of all of the information taken into account by the decision-making body is a critical element of procedural due process, however, disclosure of that information prior to the hearing contributes to the fairness of the hearing and also to the efficiency with which it can be conducted. Parties expecting to present evidence at a hearing should be required to supply in advance a list of witnesses they propose to call and a brief summary of the testimony that they expect to elicit from those witnesses. Any reports or studies prepared by a party for introduction at the hearing should be on file in advance so that they can be studied by other interested persons and so that copies for review and critique can be made at leisure. Staff reports should not be concealed until the penultimate moment before the decision is made; they should be prepared and circulated in advance. The objective of procedural due process is to guarantee that the decision-making body has before it all of the information that is pertinent to its decision in a fashion that is calculated to ensure, at best it can be done, that the decision--making process will be open, fair, and thorough -- which is the essence of the constitutional concept of procedural due process.

(10) SUBSTANTIVE DUE PROCESS. Plan commissions, zoning boards, and local governing bodies must be concerned not only with whether their procedures are fair, but also with whether the decisions they make are substantively constitutional. In it substantive aspects, the constitutional guarantee of due process is an assurance that no person will be deprived of his property for arbitrary reasons. A restriction on, or a deprivation of, rights in property is constitutionally supportable only if the conduct or use of property is restricted by reasonable legislation reasonably applied. That is the legislation must be within the scope of the authority of the legislative body, rationally related to the achievement of a legitimate public purpose, and applied for a purpose that is consistent with the purpose of the legislation itself. (See State v. Johnson, 265 A.2d 711 (Maine 1970) and 1 Rathkopf, The Law of Zoning and Planning, pp. 6-10 to 6-11 (4th ed., 1980.)]

The rule that regulation must meet substantive due process standards usually means, in the context of zoning ordinances, that the question of whether a zoning ordinance meets or does not meet that test depends, in part, on whether there is a reasonable use to which the property can be devoted under the restrictions in question. Zoning restrictions do not fail substantive due process standards simply because the landowner cannot devote his property to its most profitable use. [Arverne Bay Construction Co. v. Thatcher,278 N.Y. 222, l5 N.E.2d 587 (1938); McCarthy V. City of Manhatten Beach, 41 Cal.2d 879, 264 P.2d 932 (1953); Trever v. City of Sterling Heights, 53 Mich.App. 133, 218 N.W.2d 810 (1974); Guaclides v. Borough of Englewood Cliffs, 11 N.J.Super. 405, 78 A.2d 435 (1951)); Dusi v. Wilhelm,25 Ohio Misc. 111, 266 N.E.2d 280 (1970). Occasionally, limitations on the use of land that really do not permit any reasonable use have been sustained. See Consolidated Rock Products v. City of Los Angeles, 57 Cal.2d 515, 20 Cal. Rptr. 638, 370 P.2d 342 (1962).]

This is a typical way that the courts phrase the reasonable use rule: “To sustain an attack upon the validity of the ordinance an aggrieved property owner must show that if the ordinance is enforced the consequent restrictions upon his property preclude its use for any purpose to which it is reasonably adapted” [Arverne Bay Construction Co. v. Thatcher, supra Note 29].

In some decisions, the question of whether regulations meet substantive due process Standards is decided by attempting to balance the burdens imposed on the landowner against the public benefit secured by the regulations. A typical formulation of this “balancing” test is:

> . . . . if the gain to the public is small when compared with the hardship imposed upon individual property owners, no valid basis for an exercise of the police power exists. It is not the owner’s loss of value alone that is significant but the fact that the public welfare requires the restriction and resulting loss, the ordinance must fail and in determining whether a sufficient hardship on the individual has been shown the law does not require that his property be totally u;unsuitable for the purpose classified. It is sufficient that a substantial decrease in value results from a classification bearing no substantial relation relation to the public welfare. [Weitling v. County of Du Page,186 N.E.2d 291 (Ill. 1962).]

In recent years, the courts have increasingly looked for evidence of a comprehensive planning process as the underpinning for municipal land-use regulations and as the best assurance that regulations will meet substantive due process standards. [Udell v. Haas, 288 (N.Y. 1968); Raabe v. City of Walker, 174 N.W.2d 789 (Mich. 1970);

Forestview Homeowners Ass'n. v. County of Cook, 309 N.E.2d 763 (Iii.App. 1973): Dayless County v. Snyder, 556 S.W.2d 688 (Ky. 1977); and Fasano v. Board of County Commissioners of Washington County, supra, Note 9.] The Courts are recognizing the fact that a decision made in the context of overall land-use policies is much less suspect than a decision made ad hoc, quite frequently in the midst of intense controversy.

The procedural and the substantive aspects of due process have become much more important to both landowners and local officials since the U.S. Supreme Court, in Owen V. City of Independence, [445 U.S. 622 (1980)], decided that any constitutional violation by local government, whether procedural or substantive, could subject the municipality to a damage award under Section 1983. The dissent of Justice Brennan in the recent decision by the Court in San Diego Gas and Electric v. City of San Diego, [44 CCH Sup. Bulletin, B 1594, B 1635 (1981)] plainly indicates that at least some members of the Court are interested in encouraging municipalities "to err on the constitutional side of police power regulations."

Thus municipal officials must continually be aware of the limits imposed on them by both procedural and substantive rules of due process.

RESOLUTION 1755

FLATHEAD COUNTY'S ADOPTED FRAMEWORK FOR COORDINATION

WHEREAS, Flathead County, as a political subdivision of the State of Montana, desires to fully participate in the planning and regulatory process at the Federal and State level; and

WHEREAS, the County desires to participate in a meaningful manner in the planning process of both State and Federal agencies; and

WHEREAS, Federal law and regulation repeatedly discuss "Coordination with other Federal agencies, State and local governments, and Indian Tribes," in NEPA, FLMA, (citations in Flathead County Natural Resource Document, Appendix C); and

WHEREAS, Flathead County Commissioners created the Natural Resource Committee of the County Planning Board on July 28, 2003, appointed the member thereof on December 22, 2003, and have delegated part of this information gathering, decision making and planning process to the Natural Resource Committee.

WHEREAS, the County desires to implement a framework for participation in this process, to best facilitate "Coordination and Cooperation with other agencies"; and

WHEREAS, the State and Federal agencies recognize that the County is impacted by State and Federal planning and regulatory effect, and desire to encourage the County's meaningful participation in the same; and

WHEREAS, the County recognizes that State and Federal agencies are impacted by County planning and regulatory effect, and desire to encourage agencies meaningful participation in the same; and

WHEREAS, the County has cooperating status:

NOW, THEREFORE, BE IT RESOLVED that Flathead County and its designated agents desire to participate in the State and Federal planning process as follows:

1) Meaningful public involvement probably requires more then timely, exchange of information, It places an additional responsibility on the U.S. Forest Service and other Federal agencies to incorporate, where appropriate, the ideas and comments of of State and local entities into Federal land use plans and decisions. When the comments of State and local entities are not incorporated, the Forest Service and other Federal agencies should explain why as thoroughly and clearly as possible.

2) Staff should be allowed to work with a possible action to determine whether it is reasonable that it will become a proposed action and shape the proposal so that it can be intelligently discussed. Meaningful involvement by the County probably begins at the point the staff recommends that the decision maker consider a discretionary action.

3) Public involvement can be interpreted to require open meetings and that there is no need to have a meeting until the topic can be discussed publicly in a meaningful way. The sharing of technical information does not require a public meeting.

4) Flathead County recognizes that the process of coordination, cooperation, and consideration of land and resource planning options place certain responsibilities upon Flathead County. To this end, Flathead County commits itself to respond to agencies enquiries to participate in the process described herein, and be available before, during, and after the public participation process. Flathead County further understands its obligation to share information and ideas with State and Federal agencies, in the similar manner outlined herein. Flathead County recognized that the rights and obligation enumerated in this paragraph reciprocate amongst Local, State, and Federal agencies.

DATED this 21st day of October, 2004.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

By:__/s/_____
Howard W. Gipe, Chairman

By:__/s/_____
Robert W. Watne, Member

By:__/s/_____
Gary D. Hall, Member

ATTEST:
Paula Robinson, Clerk

By:_/s/Monica R. Eisinzimer
Deputy

APPENDIX J: HISTORY OF ROADLESS LANDS

"Roadless lands" refer to Federal lands meeting minimum standards for attributes which qualify the area for evaluation for possible additions to the Nation's Wilderness System. The areas generally must exhibit little evidence of past management and development (no roads) and a minimum size of 5,000 acres

"Roadless Lands" has its roots or origins from 1972 and was first inventoried, mapped and completed in 1973 on the Flathead National Forest. Roadless lands originate from the National Forest Roadless Area Review and Evaluation or (RARE I). Mapping of 1,449 areas totaling over 56 million acres. RARE I recommended 272 areas totaling 12.3 million acres for wilderness designation.

In response to critics of RARE I, a second Roadless Area Review and Evaluation (RARE II) was begun in June, 1997 to correct inconsistencies in mapping and evaluation of candidate areas. RARE II inventoried over 62 million acres. The RARE II January FEIS recommended to the U.S. Congress over 15 million acres of Wilderness, 10.1 million acres for further study, and 36.15 million acres for multiple use. This recommendation was litigated and found by the courts to violate NEPA because the evaluations were too broad and did not adequately address site specific attributes of each inventoried area.

In 1983 the National Forest Management Act (NFMA) implementing regulations were changed to require individual Forest Plans to update the RARE II inventory, make site-specific evaluations of wilderness values, feasibility of management as wilderness, proximity to existing wildernesses, the anticipated long-term changes in plant and animal diversity, and values forgone and effects on management of adjacent lands as consequences of wilderness designation. Based on these evaluations, each Forest Plan made recommendations to Congress for additions to the wilderness system and designated multiple use long term land uses for the balance of inventoried areas.

Most Forest Plans were completed in mid to late 1980's and Congress has not acted on any of the recommendations.

In October of 1999 President Clinton directed the Forest Service to do another inventory and evaluation when many Forest Plans should have been revised or in the revision process. A nationwide E.I.S. process similar to the 1979 RARE II process was conducted and resulted in President Clinton issuing the "Roadless Rule" just prior to leaving office in 2000.

The President's Roadless Rule directed the U.S. Forest Service to manage all inventoried roadless areas as wilderness (no development or timber management) and amend all Forest Plans that had made previous wilderness recommendations for inventoried roadless areas.

This Roadless Rule was litigated by several States and was found to be promulgated in an illegal manner, found in violation of the National Environmental Policy Act, and the 1964 Wilderness Act. The U.S. District Court in Wyoming issued a permanent injunction and set aside the roadless rule. That decision is now under appeal in the U.S. Tenth Circuit Court of Appeals. Currently, there is a new Forest Service policy making process being formulated for management of Roadless Lands.

APPENDIX K: RESOLUTION NO. 1646

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF FLATHEAD COUNTY, MONTANA, REQUESTING ACTIVE FOREST MANAGEMENT IN THE STATE OF AND NATIONAL PUBLIC LANDS IN FLATHEAD COUNTY.

WHEREAS, the Board of Commissioners has legitimate concern about the threat of forest fires, both existing and potential, in Flathead County.

WHEREAS, the citizens of Flathead County are affected by compromised health, economic loss, lack of ability to use recreational areas, and general displeasure due to the wildfires that raged on public lands for most of the summer of 2003: and

WHEREAS, the citizens of Flathead County recognize that the death of animals, the loss of animal habitat, the loss of plants and trees and their environment benefit, the potential for erosion into lakes and streams, and the huge economic burden that falls on taxpayers as a result of wildfires on public lands.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Flathead County, Montana, as follows:

1. That all the recitals set forth above are hereby adopted as findings of Fact.
2. The Board of Commissioners of Flathead County, Montana hereby urges our State and Federal Forest agencies to pursue to the strongest possible extent the following management practices, which shall include, but not be limited to:

   a. An active management strategy as opposed to passive management.
   b. Environmentally responsible logging (thinning) of trees and clearing of deadfall as a preventative method.
   c. Aggressive firefighting and containment immediately upon commencement of any wildfire.
   d. Controlled burns when advised by forest managers.
   e. Quick and efficient logging operations in all burned areas following a wildfire in order to minimize damage to a valuable natural resource (lumber), to provide jobs in our local timber industry, and to allow the public to return to recreational activities as soon as possible.

3. The Board of Commissioners of Flathead County shall send a copy of this resolution to all State and Federal agency directors.

4. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF FLATHEAD COUNTY, MONTANA, ON THIS 2nd DAY OF OCTOBER, 2003

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

By __/s/_____
Robert W. Watne, Chairman

ATTEST
Paula Robinson, Clerk

By __/s/_____
Gary D. Hall, Member

By __/s/_____
Howard W. Gipe, Member

By:/s/ _____

APPENDIX L: ACKNOWLEDGEMENTS

FLATHEAD COUNTY BOARD OF COMMISSIONERS

Chairman Robert Watne
Commissioner Howard Gipe
Commissioner Gary Hall

The Flathead County Resource Committee would like to extend its appreciation to the Board for their support of the FNRUC and the process of developing this document.

FLATHEAD COUNTY STAFF

Elaine Nelson	Office Manager
Norma Weckworth	Office Assistant
Myrt Webb	Interim Administrator
Jim Dupont	Sheriff
Richard Stockdale	Animal Control

We appreciate the efforts of Planning Board members, and others who contributed their knowledge, experience and perspective to help create this document.

APPENDIX M: PUBLIC COMMENT ON ISSUES AFFECTING FLATHEAD & OTHER COUNTIES

In June of 2000 during the June Primary Elections a non-binding poll was placed on the ballot in Flathead County for the citizens to vote on.

Quoting, the poll stated, "I support, or I do not support, the Federal Governments policies advocating more road closures and 40-60 million more acres of roadless lands".

The turnout for the June Primary was a usual low turnout for primaries.

The results of the poll in Flathead County were 12,277 opposed and 3,206 in favor or 79% opposed.

A similar Poll was on the Primary Ballot in Lincoln and Sanders County with the result of Flathead, Sanders and Lincoln County totaling 81% opposed. Also reported was Boundary County in north Idaho showing that 91% of the citizens were opposed. The total outcome of 4 counties was 81% opposed to the two issues.

The question of federal road closures and road obliteration restricting access by the public and federal land managers to public lands is still a contentious issue for the public as is the Roadless issue that was halted in federal court and has been revised by actions of a new administration.